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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92025859
Party	Plaintiff Empresa Cubana Del Tabaco d.b.a Cubatabaco
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

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EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
-----		X

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition Transcript of Warren Pfaff,  
designated under Fed. R. Civ. P. 30(b)(6) and 45, dated April 27, 2000**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVue Nos. 138, 136, 135, 132, 91 and 89.



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff,

97 Civ. 8399

(RWS)

vs.

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

-----X

**ORIGINAL**

30(B)(6) and 45 DEPOSITION OF WARREN PFAFF

New York, New York

Thursday, April 27, 2000

Reported by:

ANNETTE ARLEQUIN

CSR NO. 1450

JOB NO. 107493

  
**ESQUIRE**<sup>™</sup>  
DEPOSITION SERVICES

216 East 45th Street, 8th Floor  
New York, NY 10017-3304  
212.687.8010 • 800.662.3287  
Fax 212.557.5972

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April 27, 2000

5

9:40 a.m.

6

7

Rule 30(B)(6) and 45 deposition of

8

WARREN PFAFF, held at the offices of

9

RABINOWITZ, BOUDIN, STANDARD, KRINSKY &amp;

10

LIEBERMAN, P.C., 740 Broadway at Astoria

11

Place, 5th Floor, New York, New York,

12

pursuant to Subpoena, before ANNETTE

13

ARLEQUIN, a Certified Shorthand Reporter and

14

a Notary Public of the State of New York.

15

16

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24

25

A P P E A R A N C E S :

RABINOWITZ, BOUDIN, STANDARD, KRINSKY &  
LIEBERMAN, P.C.

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New York, New York 10154-0053

BY: JANET DORE, ESQ.

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IT IS HEREBY STIPULATED AND AGREED,  
by and between the attorneys for the  
respective parties herein, that filing and  
sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form  
of the question, shall be reserved to the  
time of the trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be sworn to  
and signed before any officer authorized to  
administer an oath, with the same force and  
effect as if signed and sworn to before the  
Court.

1

2

W A R R E N P F A F F, called as a witness,

3

having been duly sworn by a Notary Public,

4

was examined and testified as follows:

5

EXAMINATION BY

6

MR. GOLDSTEIN:

7

Q. Please state your full name for the

8

record.

9

A. Warren Pfaff.

10

Q. What is your address?

11

A. One Strawberry Hill, Stanford,

12

Connecticut, 06902.

13

Q. And where are you employed?

14

A. McCaffrey, Ratner, Gottlieb & Lane.

15

Q. Here in New York City?

16

A. In New York.

17

Q. Have you ever been deposed before?

18

A. No.

19

Q. I'm going to give you sort of a basic

20

speech. You may already have heard it from your

21

attorney, but I'm going to be asking you

22

questions. You understand you're under oath and

23

you'll be answering the questions I ask.

24

And if you don't understand a

25

question, you should either ask me to repeat it

1 Pfaff

2 but... Why don't we mark this as  
3 Plaintiff's Exhibit 1.

4 (Plaintiff's Exhibit 1, Subpoena,  
5 marked for identification, as of this date.)

6 BY MR. GOLDSTEIN:

7 Q. I'm showing you what's been marked as  
8 Plaintiff's Exhibit 1. This is a subpoena to  
9 McCaffrey, Ratner, Gottlieb & Lane.

10 Have you seen this document before?

11 A. I don't recall seeing this per se.

12 Q. Could you look in the -- turn to the  
13 second and third pages and tell me if you recall  
14 reviewing that.

15 (Witness reviewing document.)

16 A. No, I don't recall seeing this.

17 Q. Do you understand that you're  
18 testifying here pursuant to a subpoena?

19 A. I do.

20 Q. And you understand that you've been  
21 designated to testify on behalf of the McCaffrey,  
22 Ratner firm?

23 A. Yes.

24 Q. And it's okay if I call it the  
25 McCaffrey firm or the McCaffrey, Ratner firm,

1 Pfaff

2 you'll understand what I'm talking about?

3 A. (Witness nods).

4 Q. One thing you're going to need to do  
5 is answer orally, yes or no, because if you nod,  
6 the court reporter won't necessarily know unless  
7 she's looking at you.

8 A. Yes.

9 Q. Thank you.

10 And even if you have not seen this  
11 document or don't recall seeing this document,  
12 have you reviewed the six topics that you've been  
13 asked to testify about that are set forth on  
14 page 2?

15 A. Yes.

16 Q. Okay. And do you understand that your  
17 testimony is the testimony of the McCaffrey firm?

18 A. Yes.

19 Q. As to the six topics, do you consider  
20 yourself the person most knowledgeable at  
21 McCaffrey on all six of the topics?

22 A. The most? I don't know about the  
23 most. Certainly I'm very knowledgeable. To take  
24 them as an aggregate, yes, I would say that I  
25 would be the most knowledgeable taking all six

1 Pfaff

2 together.

3 Q. As an aggregate.

4 In particular, are there any  
5 particular items where you think there is a  
6 person more knowledgeable than you at McCaffrey?

7 A. No.

8 Q. You would say you're either most  
9 knowledgeable or as knowledgeable as anybody as  
10 to each of the items?

11 A. Yes.

12 Q. Have you discussed your deposition  
13 with anyone prior to coming here?

14 A. No.

15 Q. Other than counsel I guess is what I'm  
16 asking.

17 A. No.

18 Q. You have not reviewed any information  
19 with other people at McCaffrey to prepare for the  
20 deposition?

21 A. Yes.

22 Q. And who have you spoken with?

23 A. The chairman.

24 Q. And who is that?

25 A. Sam Ratner. The president, Bill



1

Pfaff

2

McCaffrey. That's it.

3

Q. Anyone else?

4

A. That's it.

5

6

Q. Did you take any other steps to gather information in preparing for this deposition? In other words, did you review any documents?

7

8

A. Oh, yes.

9

10

11

Q. And without asking you to name each document, generally what sort of documents did you review?

12

A. The documents that you received.

13

14

Q. Just the in-house McCaffrey documents?

15

16

A. And -- yes, and documents, of course, that we received over time from General Cigar.

17

18

Q. Did you review any documents that you are aware that we have not received?

19

A. No.

20

21

Q. In your discussions with Mr. Ratner, generally what did you discuss with him in preparation for the deposition?

22

23

A. Only some questions I had with regard to packaging.

24

25

Q. We'll probably come back to that.

1 Pfaff

2 handwriting.

3 A. Yes. Those Sheila McCaffrey had.

4 It's her handwriting. You already had the  
5 information, the same information typewritten.

6 Q. Did you ask everybody at the firm who  
7 had any involvement with Cohiba to search their  
8 files for any documents concerning Cohiba?

9 A. Yes.

10 Q. And would you expect a request like  
11 that to be honored or followed?

12 A. I would.

13 Q. When did McCaffrey -- does McCaffrey  
14 use email?

15 A. Yes.

16 Q. When did McCaffrey start using email,  
17 at least for the ability of internal message?

18 A. Quite recently.

19 Q. After 1997?

20 A. Yes.

21 Q. After 1998?

22 A. Yes.

23 Q. I'm going to ask you a few questions

24 about your professional background.

25 How long have you been at McCaffrey,

1 Pfaff

2 Ratner?

3 A. Ten years.

4 Q. And I take it it's a partnership, not  
5 a corporation?

6 A. It's a partnership. It's a  
7 corporation. It's an Inc. Wholly-owned.

8 Q. Wholly-owned.

9 And the owners are considered  
10 partners?

11 A. Partners.

12 Q. Are you a partner?

13 A. No.

14 Q. How many partners are there?

15 A. There are five.

16 Q. Is it the four names plus --

17 A. Plus.

18 Q. -- the McCaffreys, including the two  
19 McCaffreys?

20 A. Yes.

21 Q. And I take it it's an advertising  
22 firm?

23 A. Correct.

24 Q. And does it do anything else other  
25 than --

1 Pfaff

2 A. Strictly advertising.

3 Q. And what is your current position  
4 there?

5 A. Executive vice president.

6 Q. And who do you report to?

7 A. Bill McCaffrey.

8 Q. Would you say that you have the  
9 highest position within the firm who's not a  
10 partner? Would that be fair?

11 A. I guess -- I think I'm the only  
12 executive vice president who isn't a partner,  
13 yeah.

14 Q. And how long have you been the  
15 executive vice president?

16 A. Quite a long while. Probably about  
17 eight years.

18 They called me a senior vice president  
19 when I joined the company.

20 Q. So you were senior vice president for  
21 about two years?

22 A. Right.

23 Q. And you came in 1990?

24 A. April 1990.

25 Q. So exactly ten years.

1 Pfaff

2 And what are your general job  
3 responsibilities?

4 A. I'm a creative person. Writer  
5 primarily.

6 Q. More in the actual creation of the ads  
7 than management, administrative?

8 A. Creating strategies and creating  
9 advertising.

10 Q. If I get into an area in which there's  
11 confidentiality unrelated to, you know, this  
12 case, let me know and I'll decide if it's  
13 something I really want or not.

14 A. I understand.

15 Q. Who are your primary clients, you  
16 personally?

17 A. Presently, General Cigar.

18 Q. Is that 100 percent of your work or  
19 most of your work?

20 A. Presently.

21 Q. My fault. It was a compound question.

22 Would you say it's 100 percent of your  
23 work now?

24 A. At this time, yes.

25 Q. And how long has it been --

1 Pfaff

2 MS. DORE: Let him finish the  
3 question.

4 BY MR. GOLDSTEIN:

5 Q. Yeah, I need to finish my question and  
6 then you...

7 What I asked was how long has General  
8 Cigar been your exclusive client or taking up all  
9 of your time?

10 A. For only the past two months.

11 Q. And prior to that, let's say the '96  
12 through '98 period?

13 A. Oh, I worked on New Plan Realty, a  
14 heavy duty account. What else. Tetra,  
15 T-e-t-r-a. It's a part of Warner-Lambert. A  
16 little bit on Olympus Microscopes perhaps.

17 Q. During that time period, though,  
18 '96-'98, was General Cigar a significant  
19 client?

20 A. Oh, yes. Still a very significant  
21 client.

22 Q. And have they been a significant  
23 client since 1990?

24 A. Absolutely.

25 Q. As to the firm itself over the last,

1 Pfaff

2 you know, decade that you've been there, what  
3 percentage would you say General Cigar has been  
4 as a client?

5 A. It's a major client. I wouldn't put a  
6 percentage on it. I wouldn't be able to do that,  
7 I don't think.

8 Q. Would you say it's been the largest  
9 client of McCaffrey, Ratner?

10 A. At times.

11 Q. Would it be fair to say over the past  
12 decade it's been one of the major clients?

13 A. Yes.

14 Q. As senior vice president, were your  
15 job responsibilities similar?

16 A. Similar.

17 Q. Prior to coming to the McCaffrey firm,  
18 where were you employed?

19 A. Warren Pfaff Incorporated.

20 Q. And what was that business?

21 A. Advertising agency.

22 Q. And you were the president of that  
23 company?

24 A. Chairman and CEO.

25 Q. And how long were you in that, Warren

1 Pfaff

2 Pfaff?

3 A. Twenty years.

4 Q. Did the McCaffrey firm buy your  
5 company?

6 A. No, not as such.

7 Q. You left the company and went to work  
8 for McCaffrey?

9 A. Yes.

10 Q. And Warren Pfaff, Inc. no longer  
11 exists; is that correct?

12 A. Correct.

13 Q. And did you do similar work in terms  
14 of the nature of the work; creative strategies,  
15 advertising --

16 A. Yes.

17 Q. -- at Warren Pfaff?

18 A. Yes.

19 Q. Did you have -- was General Cigar a  
20 client of yours at Warren Pfaff?

21 A. Yes.

22 Q. Did you bring them with you to  
23 McCaffrey?

24 A. Yes.

25 Q. Had they been a client of McCaffrey



1 Pfaff

2 prior to you coming?

3 A. No.

4 Q. And how long had General Cigar been a  
5 client of yours?

6 A. Nine years.

7 Q. So from 1981 until 1990?

8 A. April 1981.

9 Q. Everything happened in April.  
10 And how large was the Warren Pfaff  
11 firm?

12 A. A small company.

13 Q. Would you say about 10 employees, 20  
14 employees?

15 A. Eight employees, twelve accounts.

16 Q. When you say "12 accounts," you mean  
17 you had 12 clients that you did advertising work  
18 for?

19 A. Correct.

20 Q. And was it exclusively an advertising  
21 firm?

22 A. Correct.

23 Q. While you were at Warren Pfaff, what  
24 products of General Cigar's did you do  
25 advertising work on?

1 Pfaff

2 A. Macanudo cigars, Partagas cigars,  
3 P-a-r-t-a-g-a-s.

4 MR. GOLDSTEIN: Off the record.

5 (Discussion off the record.)

6 BY MR. GOLDSTEIN:

7 Q: Any other General Cigar products?

8 MS. DORE: Are we talking about while  
9 he was at Warren Pfaff?

10 MR. GOLDSTEIN: While he was at Warren  
11 Pfaff.

12 MS. DORE: Okay.

13 A. I don't recall any others.

14 Q. Do you specifically recall that you  
15 did not do any work on Cohiba?

16 A. No work on Cohiba.

17 Q. Did you do any work on any other  
18 Culbro Corporation subsidiaries or products of  
19 the Culbro Corp.?

20 A. No.

21 Q. Did you do any other work for General  
22 Cigar that may not have been cigars?

23 In other words, I don't know what  
24 products they had or what brands they had. Did  
25 you do any work for General Cigar that was not

1 Pfaff

2 Q. Who did their White Owl work?

3 A. White Owl? I don't know.

4 Q. Do you know if any ad agency during  
5 this 1981 to 1990 period did advertising of  
6 Cohiba for General Cigar?

7 A. I don't know.

8 Q. Are you aware of any advertising of  
9 Cohiba from 1981 to 1990?

10 A. None.

11 Q. Do you know that there was no  
12 advertising or you're not just aware of whether  
13 there was?

14 A. I wasn't aware of any and I certainly  
15 don't believe there was any.

16 Q. Are you aware of any advertising of  
17 Cohiba, General Cigar's Cohiba, from 1978 to  
18 1981?

19 A. None.

20 Q. It is your belief that there was no  
21 advertising during that time?

22 A. Correct.

23 Q. Prior to 1981, where were you  
24 employed, April of 1981?

25 A. J. Walter Thompson Company.

1 Pfaff

2 Oh, I'm sorry. Prior to --

3 Q. Well, you said you started your  
4 firm in --

5 A. 1970. No. I was -- I had, I had my  
6 firm for 20 years, from 1971 to '90.

7 Q. I may have misheard you or you may  
8 have misspoke. I wrote down that you had started  
9 your firm in April of 1981.

10 A. No. April '81 I got the General Cigar  
11 account.

12 Q. I'm sorry.

13 A. April of 1971 I opened the doors of  
14 Warren Pfaff, Inc. The company was actually  
15 formed on Halloween of 1970.

16 Q. And were you the, always the chairman  
17 and CEO?

18 A. The eponymous founder.

19 Q. And the sole owner?

20 A. Correct.

21 Q. And the first time you did any work  
22 for General Cigar was in 1981?

23 A. Correct.

24 Q. And that continued through --

25 A. To April of '81.

1 Pfaff

2 Q. And that continued until 1990 when you  
3 went to --

4 A. That's correct.

5 Q. -- McCaffrey?

6 During the time of this approximately  
7 20-year period of Warren Pfaff, did you do any  
8 other tobacco advertising?

9 When I say "tobacco," cigarettes,  
10 cigars, pipe tobacco.

11 A. A little pipe tobacco advertising.

12 Q. And who was that for?

13 A. Some Danish company. They were at  
14 least Scandinavian.

15 Q. Skoal?

16 A. No. It's a pipe tobacco. It was very  
17 minor and they blew away. I don't know. It was  
18 very minor.

19 Q. And that's the only tobacco  
20 advertising you did?

21 A. Yes.

22 Q. At General -- at McCaffrey, does  
23 McCaffrey do any other tobacco advertising other  
24 than General Cigar?

25 A. No.

1 Pfaff

2 Q. Not during the ten years you've been  
3 there?

4 A. Correct.

5 Q. Prior to 1990, are you aware if  
6 McCaffrey did any advertising for tobacco  
7 products?

8 A. To my knowledge, they did not.

9 Q. And then I started to ask you prior to  
10 Warren Pfaff, Inc., where were you employed, and  
11 you had --

12 A. J. Walter Thompson & Company.

13 Q. And how long were you there?

14 A. Twelve plus years.

15 Q. So I'm taking you back to about 1960?

16 A. '58.

17 Q. And did you attend college?

18 A. I did.

19 Q. And when did you graduate from  
20 college?

21 A. '51.

22 Q. And where was that?

23 A. Dartmouth College.

24 Q. And do you have any graduate degrees?

25 A. None.

1 Pfaff

2 Q. Do you know where she currently is  
3 employed?

4 A. Christina?

5 Q. Yes.

6 A. No, I don't.

7 Q. Do you know if she's in the city?

8 A. I believe she is.

9 Q. Since you've come to McCaffrey, has  
10 there been continuous General Cigar work?

11 A. Yes.

12 Q. Putting aside Cohiba for the moment,  
13 what General Cigar products have you done  
14 advertising work for?

15 A. Macanudo and Macanudo line  
16 extensions. Introduction of Macanudo Robust,  
17 introduction of Macanudo Maduro, introduction of  
18 Macanudo Vintage Cabinet Selection, introduction  
19 of Macanudo Miniatures.

20 Partagas cigars. Introduction of  
21 Partagas Limited Reserve, introduction of  
22 Partagas Serie, S-e-r-i-e capital S, Serie "S",  
23 introduction of Partagas Miniaturas.

24 Temple Hall Estates.

25 Q. That's a different brand --

1 Pfaff

2 A. Yes.

3 Q. -- than Partagas?

4 A. Yes.

5 Ramon Allones. That's about it, I  
6 guess.

7 Q. Any work for Canaria d'Oro?

8 A. No. We've done a lot work, it's never  
9 run. I don't think anything was ever run for  
10 Canaria d'Oro.

11 Q. And you do the mass market adver --  
12 mass market brands? Is that the correct term  
13 or --

14 A. They sold those.

15 Q. When were they sold?

16 A. They were sold about two years ago.

17 Q. Prior to that time?

18 A. We didn't do it.

19 Q. You did not do that?

20 A. No. Garcia Vega and such. I think we  
21 did one Garcia Vega ad once, trade ad of some  
22 sort.

23 Q. Other than that one ad, your work for  
24 General Cigar has been in the premium cigars?

25 A. Premium end.



1 Pfaff

2 Q. Would it be fair to say that Sam  
3 Ratner is the head person on the General Cigar  
4 accounts?

5 A. No.

6 Q. Is there one head person?

7 A. Bill McCaffrey. Administratively you  
8 could say Sam is, but he's -- yeah, he's an  
9 administrator, but you could say the two of  
10 them. Fair enough.

11 Q. When did McCaffrey first start doing  
12 work on Cohiba for General Cigar?

13 A. 1993.

14 Q. Did you have -- did McCaffrey have any  
15 involvement in -- well, let me strike that  
16 question.

17 Were you aware that in late 1992,  
18 General Cigar filed a trademark application for  
19 Cohiba?

20 A. No.

21 Q. Is this the first you have heard of  
22 it?

23 MS. DORE: Maybe you should put a time  
24 period into the question.

25 MR. GOLDSTEIN: Let me reask the

1 Pfaff

2 MR. GOLDSTEIN: Could we mark this as  
3 Plaintiff's 2.

4 (Plaintiff's Exhibit 2, Morgan &  
5 Finnegan cover letter dated 12-30-92 and  
6 trademark application, marked for  
7 identification, as of this date.)

8 BY MR. GOLDSTEIN:

9 Q. I'm showing you what's been marked as  
10 Plaintiff's 2 dated December 30th, 1992, and it's  
11 a cover letter and a trademark application filed  
12 by the Morgan & Finnegan firm on behalf of  
13 General Cigar.

14 When I refer to the block lettering, I  
15 want you to turn to the last page, which has a  
16 number at the bottom GC 006281, and it's that  
17 block letters that I am referring to.

18 A. Well, I don't know who did that. No,  
19 I don't know.

20 Q. Have you ever had any discussions  
21 about why this block lettering was chosen for  
22 Cohiba?

23 A. We've not been part of that creation.  
24 We got into it only after it was well along.

25 Q. Did you have any discussions after the

1 Pfaff

2 fact with anybody, either at McCaffrey or at  
3 General Cigar, as to why this block lettering was  
4 chosen?

5 A. No, I don't recall any discussions per  
6 se.

7 I recall that there were discussions  
8 about the totality of the logo, coloration and so  
9 forth.

10 Q. When you say "totality," what are you  
11 referring to?

12 A. It was definitely an attempt to stay  
13 away from the lettering that was utilized by  
14 Cubatabaco; that is, the company did not wish to  
15 use the, what we call dental molding, the  
16 checkerboard effect.

17 Q. Is that in the lettering or is that in  
18 the design around --

19 A. In the design.

20 We also try -- the only role that we  
21 actually played was to try to make certain that  
22 red was a dominant color and that no yellow was  
23 utilized, and we recommended what we called the  
24 red dot to help differentiate the cigar from its  
25 Cuban namesake.

1 Pfaff

2 As for the lettering, the lettering I  
3 think was picked as a strong piece of type that  
4 would say this is a very full-bodied cigar.

5 Q. And what's your basis for saying that?

6 A. I think everything that we were doing  
7 and the client was doing was trying to aim for  
8 this full-bodied quality, so it goes without  
9 saying that that had to include the logo.

10 Q. Did anybody say to you that this block  
11 lettering was chosen --

12 A. No, not per se.

13 Q. -- as part of the full-bodied?

14 A. I'm sorry. Not per se.

15 Q. When did McCaffrey recommend the red  
16 dot?

17 A. That would have been pretty close to  
18 the year of the introduction, which was '97. It  
19 was pretty late in the game, but I can't be  
20 specific.

21 Q. From 1993 to 19 -- up to 1997, the red  
22 dot, there was no red dot in the Cohiba logo; is  
23 that correct?

24 A. That's correct.

25 Q. You're aware that there was a Cuban

1 Pfaff

2 Cohiba?

3 A. Yes.

4 Q. When did you personally became aware  
5 of that?

6 A. I would say either in 1992 or '93.

7 Q. Prior to that time, you were not aware  
8 of any Cuban Cohiba?

9 A. I was not.

10 Q. Have you ever smoked Cuban cigars?

11 A. Once.

12 Q. Other than in 1954 in Havana?

13 A. Once.

14 Q. And when was that?

15 A. That would have been about 1985.

16 Q. And do you recall what it was that you  
17 smoked?

18 A. I don't recall the brand. Someone  
19 sent it to me.

20 Q. I think the statute of limitation  
21 expired so...

22 Were you aware of a magazine called  
23 Cigar Aficionado?

24 A. Yes.

25 Q. And do you subscribe to that?

1 Pfaff

2 A. We do.

3 Q. The firm does?

4 A. Right.

5 Q. And did you -- do you recall

6 getting -- if you got the premier issue?

7 A. Yes.

8 Q. And do you recall when the premier

9 issue came out?

10 A. It came out in autumn '92.

11 Q. And do you recall reviewing the

12 magazine at that time?

13 A. I scanned it.

14 Q. Do you recall if it had any articles  
15 on Cohiba or any discussion on Cohiba, the Cuban  
16 Cohiba?

17 A. I did, but I really didn't know that  
18 at the time. I can't remember whether I read  
19 that article in '92 or '93. I'm not so sure that  
20 I -- I'm not so sure that I didn't hear about the  
21 cigar from General Cigar first, and then went  
22 back to the magazine and read about it. I'm not  
23 positive.

24 But at any rate, it was a sizable -- I  
25 looked at it yesterday. I was surprised to find

1 Pfaff

2 it in that first issue. I thought it was in a  
3 later issue.

4 MR. GOLDSTEIN: Why don't we mark this  
5 as Plaintiff's Exhibit 3.

6 (Plaintiff's Exhibit 3, Autumn 1992  
7 Cigar Aficionado Premier Issue, Volume I,  
8 No. 1, marked for identification, as of this  
9 date.)

10 BY MR. GOLDSTEIN:

11 Q. What we've marked as Plaintiff's  
12 Exhibit 3 is the Cigar Aficionado of autumn  
13 1992. On the top it says "Premier Issue, Volume  
14 I, No. 1."

15 MR. GOLDSTEIN: At this time, this is  
16 our only color copy, no other version. In  
17 an affidavit, I think it's the Heyman  
18 affidavit, we've produced a full black and  
19 white copy of this, whether you have the  
20 magazine or not, but for now let's just keep  
21 this one marked as Plaintiff's 3 and we  
22 won't make a copy of it unless you need a  
23 copy made.

24 MS. DORE: I am going to want a copy  
25 of it as marked as an exhibit.

1 Pfaff

2 MR. GOLDSTEIN: Okay. There is some  
3 water damage to this. I don't think it  
4 affects any of the things we're interested  
5 in.

6 MS. DORE: That's no problem.

7 BY MR. GOLDSTEIN:

8 Q. I am showing you what's been marked as  
9 Plaintiff's Exhibit 3, and do you recall this as  
10 the premier issue --

11 A. I do.

12 Q. -- of Cigar Aficionado?

13 A. I do.

14 Q. And the first article on the cover  
15 says "Cuba's best cigar."

16 Do you see that?

17 A. Yes.

18 Q. Now, do you know what they refer to as  
19 Cuba's best cigar in the magazine?

20 A. As -- yeah, they refer to Cohiba as  
21 Cuba's best cigar.

22 Q. And do you recall reviewing that  
23 article at the time the magazine came out?

24 A. No, I don't recall reviewing it  
25 precisely at the time it came out. I may have,



1 Pfaff

2 but it may have been in early -- it may have been  
3 in '93 after General Cigar told us that they were  
4 going to come out with a Cohiba.

5 Q. Do you recall reviewing the magazine  
6 itself when it came out?

7 A: Review would be too strong a word. I  
8 scanned it.

9 Q. You saw it?

10 A. Yes.

11 Q. Were you curious as to what the  
12 magazine thought Cuba's best cigar was?

13 A. No. Not really.

14 Q. Okay. And did you at some point read  
15 the article, "The Legend of Cohiba. Cigar Lovers  
16 Everywhere Dream of Cuba's Finest Cigar"?

17 A. Yes.

18 Q. And when did you first -- when do you  
19 believe you first read that?

20 A. Either in '92 or '93.

21 Q. At some point did you become aware of  
22 the Cohiba logo, the Cuban Cohiba logo?

23 A. Yes.

24 Q. And when was that?

25 A. That would have been in '93.

1 Pfaff

2 Q. And how did you become aware of that?

3 A. I don't recall. We had the product or  
4 we had, or we had reproductions of the logo.

5 MR. GOLDSTEIN: Mark this as  
6 Plaintiff's 4.

7 (Plaintiff's Exhibit 4, Cohiba logo,  
8 marked for identification, as of this date.)

9 BY MR. GOLDSTEIN:

10 Q. I'm going to show you what's been  
11 marked as Plaintiff's Exhibit 4.

12 A. Um-hmm.

13 Q. Does this look like -- is this a  
14 reproduction of the Cohiba logo that you recall  
15 seeing similar in 1993?

16 A. It's funny. I just don't recall that  
17 head.

18 Q. You don't recall the, what's called  
19 the Indian head?

20 A. Yeah. It's funny. I just don't  
21 recall it.

22 Q. Do you recall the lettering?

23 A. Yeah. I recall the style of the  
24 lettering, yeah.

25 Q. Do you recall at that time, in 1993,

1 Pfaff

2 having any thoughts regarding the similarity or  
3 dissimilarity between the lettering of the Cuban  
4 Cohiba and the General Cigar Cohiba?

5 A. Well, I felt they were close.

6 Q. Do you know which was -- which came  
7 first?

8 A. Which came first?

9 Q. Do you know whether the Cubatabaco  
10 lettering, block lettering design was earlier in  
11 time to the General Cigar block lettering?

12 A. I don't know that for a fact.

13 Q. Do you have an opinion?

14 A. I would think it would have had to  
15 have been, since the cigar was being made for  
16 some time.

17 Q. You think the Cuban was older, Cuban  
18 lettering was older?

19 MS. DORE: Don't speculate.

20 A. Yeah. I can't say for sure.

21 Q. Is it your testimony that you don't  
22 know whether the Cubatabaco block lettering is  
23 earlier in time to the adoption of the General  
24 Cigar block lettering?

25 A. I don't know for a fact.

1 Pfaff

2 1993 regarding cigar smokers' knowledge about the  
3 Cuban Cohiba?

4 A. We didn't do any research ourselves,  
5 and I don't recall ever seeing any research per  
6 se on that subject.

7 Q. Do you recall any discussions as to  
8 whether General Cigar did research either on  
9 their own or with another, you know, consultant?

10 A. No, I don't recall any discussions.

11 Q. Do you recall seeing any documents  
12 that would support that there was any research  
13 done on knowledge in the United States of the  
14 Cuban Cohiba?

15 A. I don't recall seeing any.

16 Q. So what's the basis for your  
17 statements regarding the limited knowledge of the  
18 Cuban Cohiba?

19 A. Oh, just the feel of it. I mean my  
20 goodness, unanimously in our own agency, none of  
21 us had heard of it.

22 Q. None had heard until the Cigar  
23 Aficionado article?

24 A. I can't remember which came first, our  
25 reading of -- about it or hearing about it from

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Pfaff

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General Cigar.

3 Q. Have you ever had discussions with Ron  
4 Milstein?

5 A. Once.

6 Q. Without -- because he's an attorney.

7 A. Right.

8 Q. I'm not interested in privileged  
9 communications, but do you recall when that was?

10 A. When I had my own agency. It would  
11 have been -- it was right after I introduced a  
12 campaign, this is a moment for a Macanudo.

13 Q. So it had nothing to do with when  
14 Milstein was at General Cigar and when you were  
15 at McCaffrey?

16 A. No.

17 Q. Have you ever had any discussions with  
18 Alfonse May-yar (phonetic), Mayer?

19 A. Mayer.

20 Q. Alfonse Mayer?

21 A. Many.

22 Q. Did you know he was in Cuba in the  
23 fall of 1992?

24 A. No.

25 Q. Did you ever have any discussions with

1 Pfaff

2 Q. Well, what I'm going to try to drive  
3 at then is to the best of your recollection, what  
4 information was communicated by General Cigar as  
5 to what they wanted McCaffrey to do, even if you  
6 can't recall a specific meeting or a specific  
7 person.

8 A. I thought we covered that.

9 MS. DORE: Yes, I thought that was  
10 asked and answered.

11 MR. GOLDSTEIN: Well, I think I  
12 covered it very generally.

13 BY MR. GOLDSTEIN:

14 Q. I'm trying specifically did they, for  
15 example, did they inform you that they had filed  
16 a trademark application at the end of 1992?

17 A. We knew that they had the trademark in  
18 the U.S.

19 Q. Did they tell you that they had filed  
20 a trademark application at the end of 1992?

21 A. No. I didn't know when they had  
22 filed.

23 Q. But they did tell you that they had  
24 the trademark in the United States?

25 A. Right.

1 Pfaff

2 Q. Did they tell you that there's a Cuban  
3 Cohiba?

4 A. Yes.

5 Q. What did they tell you about the Cuban  
6 Cohiba?

7 A. I think they told us that it had  
8 been -- that the cigar originally was made for  
9 Castro and that it was... I don't remember  
10 anything. I'm trying to...

11 MS. DORE: If you don't remember,  
12 don't guess.

13 BY MR. GOLDSTEIN:

14 Q. Did they tell you that there had been  
15 an article about that cigar in the premier issue  
16 of Cigar Aficionado?

17 A. Oh, I'm sure. Yes, I'm sure they  
18 mentioned it.

19 Q. Did they say anything about relating  
20 their ad campaign to the Cuban cigar one way or  
21 the other?

22 A. Well, it was -- yes. The assignment  
23 was we had to get across a rich tasting cigar but  
24 we had to be different about it. We had to  
25 somehow or other distinguish our cigar so that

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Pfaff

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people didn't think it was a Cuban Cohiba.

3

4

Q. Did General Cigar say how they wanted that done?

5

6

A. No. They left it up to us. That was the creative problem, in other words.

7

8

9

Q. Was there any discussion about this being a good time to launch a Cohiba in light of the publicity for the Cuban Cohiba?

10

11

12

13

A. No. Not that I recall.

What I recall, it was a good time to try to come out with a new product and get some excitement in the marketplace.

14

15

16

Q. Were you aware that in the fall of 1992 in Havana there was a celebration of 500 years of tobacco?

17

18

19

A. I don't recall.

Q. 1492 to 1992 celebration?

A. I don't recall it.

20

21

22

Q. Do you recall in the fall of 1992, a release of five new Cuban Cohibas called Linea 1492, 1492 line?

23

24

25

A. I don't recall it.

Q. Did you know that representatives of General Cigar attended that conference or



1 Pfaff

2 Q. And neither Ratner or McCaffrey can  
3 remember a meeting without you, which might be  
4 why you don't remember it?

5 A. Correct.

6 Q. Do you recall who worked on this 1993  
7 Cohiba campaign?

8 A. Uh-huh. Sheila McCaffrey and Bill  
9 McCaffrey and I.

10 (Discussion off the record.)

11 BY MR. GOLDSTEIN:

12 Q. And were there any other like junior  
13 people working on the project?

14 A. Secretarial, yeah.

15 Q. But not on the creative --

16 A. No. No, no.

17 Q. -- or marketing side?

18 A. No.

19 Q. And --

20 A. There was Bill and Sheila and I.

21 Q. I'm just going to ask you some  
22 initials from a document I have in 1997.

23 A. Okay.

24 Q. I don't think I need to mark this, but  
25 SR, is that Sam Ratner?

1 Pfaff

2 A. He was a marketing guy.

3 Q. Was he a supervisor over Rano or the  
4 other way around or unrelated or --

5 A. Yeah, that's a funny one.

6 Rano was actually senior to him, but  
7 we worked with both of them.

8 Q. After this initial meeting or meetings  
9 where you received the assignment from General  
10 Cigar in 1993, do you recall what was done at  
11 McCaffrey, what was the next thing that would be  
12 done?

13 A. We started to do layouts and cop.

14 Q. Layouts and?

15 A. And copy. Looking for an approach. I  
16 wrote different approaches and Sheila developed  
17 layouts.

18 Q. Did it ever advance to the stage where  
19 you showed your work to the client at General  
20 Cigar?

21 A. Yes.

22 Q. And did General Cigar approve of what  
23 you had done?

24 A. Yes. They liked the conceptions and  
25 we took -- well, we didn't. The client -- at

1 Pfaff

2 least I don't think we were present, but  
3 anyway... Client had some focus sections, what  
4 have you.

5 Q. What is a focus session?

6 A. A focus session is you get people who  
7 are in your target audience, and you find them  
8 and you pay them an amount to participate in a  
9 session, and you either ask them questions or you  
10 ask their opinions. Usually you don't do it with  
11 ads as such, but you do it with ad directions.

12 Q. And General Cigar did this in '93?

13 A. Yeah, at some point.

14 Well, no, no. They did that much  
15 later, much later. We were getting pretty close  
16 to it, because what really happened, best way I  
17 can put it is that we had these conceptions in  
18 '93, '94, what have you, and but then we sat on  
19 our hands and waited until they were either going  
20 to find a way to make this product or they were  
21 going to give up, one or the other.

22 And then eventually when they felt  
23 they had the product, then we went ahead and we  
24 really finalized the strategy. Many strategies,  
25 different strategies were written for this, and

1 Pfaff

2 then we buttoned up the advertising approach and  
3 they signed off on it.

4 Q. Would it be fair to say that work was  
5 done first in '93, and then no work was done  
6 again until early 1997?

7 A. Yeah, that's probably too arbitrary.  
8 We may have worked '93, '94, but it seemed to me  
9 it was like two years in there that we just were  
10 sitting there twiddling our thumbs, you know,  
11 waiting for the other shoe to drop.

12 Q. If you did work on this project in a  
13 particular year, say '94, if I don't have any  
14 documents dated '94, would there be business  
15 records that might show that, like billing  
16 records?

17 A. No, because we weren't running any  
18 media and I think probably our regular fee was,  
19 for all I know, encompassing Cohiba. I don't  
20 know what the financial arrangement was with  
21 Cohiba, whether there was financial.

22 Q. My bills, I don't know how you bill,  
23 but my bills reflect January, 50 hours Cohiba.

24 A. It could conceivably be, but I don't  
25 know whether we were even billing separately for

1 Pfaff

2 Cohiba at the time. I don't know.

3 Q. Do you know if you billed hourly or on  
4 a retainer basis?

5 A. I can't tell you.

6 Q. Sam Ratner would know that?

7 A. Yeah.

8 Q. You don't know how much General Cigar  
9 paid you for any work you did in 1993?

10 A. I have no idea. Or if they did.

11 MR. GOLDSTEIN: Why don't I mark this  
12 as Plaintiff's 5.

13 (Plaintiff's Exhibit 5, Document  
14 entitled "Cohiba Media Presentation Year  
15 One, prepared by McCaffrey and Ratner, May  
16 1993", marked for identification, as of this  
17 date.)

18 BY MR. GOLDSTEIN:

19 Q. I'm going to show you a document  
20 that's been marked Plaintiff's Exhibit 5, and it  
21 has the Bates numbers MC 00494 through 00508.

22 On the first page is handwritten "'93  
23 Program."

24 Do you know whose handwriting that is?

25 A. I don't.

1 Pfaff

2 Q. Is it yours?

3 A. No.

4 Q. Have you seen this document before?

5 Why don't you take some time to look  
6 at it.

7 (Witness reviewing document.)

8 A. Nice to see something with a date on  
9 it anyway.

10 Q. And what's that date?

11 A. May of '93. I'm surprised it wasn't  
12 April.

13 Yeah, I'm sure -- well, I would have  
14 to say that I very likely saw it.

15 Q. Do you know who prepared this  
16 document?

17 A. This was probably done by Steinhilber  
18 and maybe Sam Ratner. I don't know. I didn't  
19 write any of it.

20 Q. Do you recall seeing it at the time?

21 A. I don't.

22 Q. Do you know --

23 A. Not that I think that I would have.

24 Q. Do you know if this -- based on the

25 cover sheet, "Cohiba Media Presentation Year One,

1 Pfaff

2 prepared by McCaffrey and Ratner, May 1993," does  
3 that indicate to you whether or not it would have  
4 been shown to General Cigar?

5 A. Oh, I dare say that it would have been  
6 shown very definitely to General Cigar.

7 Q. Do you specifically recall  
8 participating in a presentation of this document?

9 A. I do not.

10 Q. And would this document have been  
11 presented like this, like this paper, or is this  
12 a slide projection presentation?

13 A. Probably like this.

14 Q. But you yourself don't recall a  
15 meeting in which this document was reviewed?

16 A. No.

17 Q. Would it have been typical to simply  
18 send this type of document to General Cigar, or  
19 would it have been more to sit down with them and  
20 review the document?

21 A. The latter more typically.

22 Q. Does the date and the nature of the  
23 document help you in any way as to when you would  
24 have started on the project?

25 A. Oh, I think we would have started

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Pfaff

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before this.

3

4

5

6

Q. Well, I would accept that, but does this look like something that would be after a couple of weeks or, you know, near final or... I'm just asking --

7

8

A. It could be a couple of weeks, it could be a couple of months.

9

10

Q. Now, on the third page in, the one that says "Cohiba product position"?

11

A. Yes.

12

13

14

Q. It says, "Cohiba blends the finest tobaccos grown with superior handmade craftsmanship to create a super premium cigar."

15

Is that an existing cigar?

16

A. That's an interesting question.

17

18

19

20

No, I think he's talking about the cigar to be, because we weren't going to advertise a cigar that was sitting there in Dunhill.

21

Q. And why is that?

22

23

A. Because the cigar that we were going to advertise was going to be a reformulation.

24

Q. Had you ever smoked the old Cohiba?

25

A. No.



1 Pfaff

2 expenditure?

3 A. I can't say for sure.

4 Q. Do you know if there was a reaction by  
5 them by that number; it's too big, it's fine,  
6 it's not enough?

7 A. I don't think there would be any cause  
8 for alarm.

9 Q. Had you ever been involved in a  
10 product launch for General Cigar of that  
11 magnitude other than ultimately the Cohiba  
12 launch?

13 A. The Robust launch was a big one.

14 Q. When was that?

15 A. The Robust came after Cohiba.

16 Q. Was that a large number in 1993?

17 A. Yes. This was a -- yeah, this was a  
18 major brand. What we had worked on with line  
19 extensions, they wouldn't get the same attention  
20 except for Robust, because Robust we treated like  
21 a new brand.

22 Q. You're treating the Cohiba as a new  
23 brand?

24 A. Oh, yeah, yeah, because very few  
25 people knew about General Cigar's first Cohiba,

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Pfaff

2

so we just introduced it.

3

Q. Let me just ask you, at page 502 it says, "Cohiba Media Strategies."

5

A. Yes.

6

Q. And it talks about a target audience and lists a few target audience definitions; drink cognac, imported wine, premium Scotch, drive luxury cars, fine accessories, and then it says "High performance in a number of these areas demonstrates a level of worldliness that is almost required in order for this man to become a potential Cohiba user."

14

I want to just ask you why is that?

15

A. It's a bit flowery for my taste. I wouldn't have written it. It doesn't even seem to make much sense. High performance sounds like he's talking about a car. It's just poorly written.

20

Q. And then if you turn to the last page,

21

508, it says "Next Steps."

22

A. 508. Yes.

23

Q. And then it says, "Client to confirm" and it lists certain things. "Objectives," "Strategies," "Start Date," "Budget."

25

1 Pfaff

2 (Witness reviewing Exhibit 5.)

3 A. Well, there really isn't -- it's  
4 pretty soft stuff. There's not really a tight  
5 definition here of an objective. It's pretty --  
6 it's not specific enough to really be considered  
7 strategically. I'm surprised we put this before  
8 the client.

9 Q. And then it says, "Agency to comply  
10 with -- last page. Sorry. 508. "Agency to  
11 comply with client feedback."

12 Do you recall getting any feedback to  
13 this document?

14 A. I don't. I don't.

15 MR. GOLDSTEIN: Why don't we mark this  
16 as Plaintiff's 6.

17 (Plaintiff's Exhibit 6, Document  
18 entitled "Marketing the Cohiba Cigar",  
19 marked for identification, as of this date.)

20 BY MR. GOLDSTEIN:

21 Q. Let me show you a document that's been  
22 marked Plaintiff's 6. It has the Bates numbers  
23 MC 509 and 510 and it's titled "Marketing the  
24 Cohiba Cigar."

25 Do you know who prepared this

1 Pfaff

2 document?

3 A. I don't.

4 Q. Did you speak to anybody at McCaffrey  
5 about who prepared this document?

6 A. I didn't.

7 Q. Do you know when it was prepared?

8 A. I don't.

9 Q. Do you know that it was prepared in  
10 1993?

11 A. I don't know for sure, but I would  
12 assume that it was.

13 Q. Is this the type of document that  
14 would have been prepared by a junior person or a  
15 senior person at McCaffrey?

16 A. This would be prepared by a senior  
17 person. I'm not so sure that it was prepared by  
18 the agency.

19 Q. Well, I guess that was going to be my  
20 next question.

21 Do you know if it was prepared by  
22 McCaffrey or by somebody at -- somebody else?

23 A. I don't know. I have a hunch. I'm  
24 looking for clues.

25 (Witness reviewing document.)

1 Pfaff

2 A. It seems to be a client prepared  
3 document. It seems to be.

4 Q. And why do you think that?

5 A. Well, ordinarily we wouldn't give the  
6 client background information about something  
7 that he knows better than we do. Background  
8 information is all about Cuban cigars here and  
9 General Cigar owns the U.S. marketing rights to a  
10 number of cigars that were originally Cuban, et  
11 cetera, et cetera. It seems as if the client is  
12 briefing the agency.

13 Q. Do you know if this was one of the --  
14 do you know if this was an initial document  
15 provided looking at it now? Has it refreshed any  
16 recollections?

17 A. It doesn't, but in answer to your  
18 first question, it could have been.

19 Q. Do you have any idea who might have  
20 prepared this at General Cigar?

21 A. It could have been John Geoghegan.  
22 This certainly appears to be a client prepared  
23 document.

24 Q. Is this statement that "The tobacco  
25 industry has been in a general the decline since

1 Pfaff

2 A. No, it was just left in our hands.

3 Q. Was this something, though, that  
4 General Cigar had stated to you; they were saying  
5 we need to create a sensation, that's what we  
6 want McCaffrey to do?

7 A. No. I don't think the word sensation  
8 was given any real currency. I think they would  
9 have said the same thing when we introduced  
10 Macanudo Robust. They could have used exactly  
11 the same.

12 Q. There was no special meaning to the  
13 term "sensation"?

14 A. No.

15 Q. Then the next paragraph refers to  
16 "...a problem that could lead to confusion with  
17 the introduction of a premium cigar with the  
18 Cohiba name."

19 Do you recall having any discussions  
20 with General Cigar about the problem of  
21 confusion?

22 A. Yeah, I think it was talked about  
23 quite often. That was, as I said earlier, an  
24 essential part of the creative problem was to  
25 differentiate this cigar, to make it distinctive

1 Pfaff

2 and different from the Cuban Cohiba.

3 Q. And then in the last sentence it  
4 talks -- the writer writes, "When the embargo is  
5 lifted, it is important that General Cigar  
6 continue to own the Cohiba name so that they will  
7 have leverage in distributing the real, Cuban  
8 Cohiba."

9 Was this discussed with McCaffrey,  
10 this desire to have leverage in distributing the  
11 Cuban Cohiba?

12 A. Well, yes, there were -- it was hoped  
13 that General Cigar would effect positive  
14 relations with Cubatabaco, and I think it's fair  
15 to say that they were looking forward to and they  
16 saw the distinct possibility of marketing the  
17 Cuban Cohiba if such a time came when it could be  
18 imported into the United States.

19 Q. All right. Here it refers to that  
20 cigar as "the real, Cuban Cohiba."

21 Was there an understanding that the  
22 real Cohiba was the Cuban Cohiba?

23 MS. DORE: I don't understand the last  
24 part of your question.

25 Can I hear that again?

Pfaff

BY MR. GOLDSTEIN:

Q. Was there an understanding among McCaffrey and people at General Cigar that you spoke to, that the real Cohiba was the Cuban Cohiba?

A. No, I don't think so at all. I think this writer came up with that. They were both very real. I think it's another reason why I think it was written by the client. I think it's very funny.

Q. At that time in '93, if you asked a cigar expert about a Cohiba, would they have equated -- describe for me a Cohiba, would they have discussed the General Cigar Cohiba?

MS. DORE: Objection. Calls for -- hypothetical. Calls for speculation as to what somebody might have said.

BY MR. GOLDSTEIN:

Q. You can answer, if you know.

A. Well, the general population, number one, the general population wouldn't have been aware of any Cohiba. The minority of cigar smokers who would have been aware of a Cohiba would have said it's a Cuban cigar, and they



1 Pfaff

2 would have had only one in their minds and it  
3 would have been Cuban.

4 Q. And do you think that's why the author  
5 was referring to "the real, Cuban Cohiba"?

6 A. Yeah. I think it's a just a bad piece  
7 of language. It's just the same guy who says,  
8 you know, must create a sensation around the  
9 brand. I mean that's a peculiar term. It's just  
10 an odd piece of writing.

11 Q. If you turn to the --

12 A. What he should have said in  
13 distributing the original Cuba Cohiba, whatever,  
14 but not real.

15 Q. If you turn to page 510.

16 A. Yes.

17 Q. Where it talks about background  
18 information, it says, "Cuban made cigars are  
19 considered the finest in the world."

20 In your opinion, is that a true  
21 statement?

22 A. No.

23 Q. In the time period 1993.

24 A. No, and I think that's highly  
25 debatable. I'm surprised to find that in there.

1 Pfaff

2 Q. Okay. And then it says, in the last  
3 paragraph it says, "Cohiba is the magic word in  
4 the cigar industry."

5 Is that referring to the Cuban  
6 Cohiba?

7 MS. DORE: Don't speculate as to what  
8 the writer of this document meant by any  
9 particular words.

10 A. Do you want me to comment on that?

11 Q. Let me ask it a different way.

12 Is it possible that the General Cigar  
13 Cohiba was the magic word in the cigar industry  
14 in 1993?

15 MS. DORE: Can I hear it again?

16 (Question was read back as follows:

17 "QUESTION: Is it possible that the  
18 General Cigar Cohiba was the magic word in  
19 the cigar industry in 1993?")

20 MS. DORE: Again, don't speculate.

21 BY MR. GOLDSTEIN:

22 Q. You can answer.

23 A. Pardon?

24 Q. You can answer.

25 A. Okay. Well, based on what I'm seeing

1

Pfaff

2

here, you take a look at the back end of the

3

second sentence, "...the name has high

4

recognition factor here in the U.S. despite the

5

fact that it cannot be purchased in the

6

country." Well, that's obviously referring to a

7

cigar that's made elsewhere, and so that would

8

have to be the Cuban Cohiba to which he's

9

referring.

10

Q. Thank you.

11

MR. GOLDSTEIN: Let's mark this as

12

Plaintiff's 7.

13

(Plaintiff's Exhibit 7, Document

14

entitled "Marketing the Cohiba Cigar",

15

marked for identification, as of this date.)

16

BY MR. GOLDSTEIN:

17

Q. I'm showing you a document that's been

18

marked as Plaintiff's Exhibit 7. It has the

19

Bates numbers MC 530 through 541.

20

The first thing I'm going to ask you

21

is if you've seen the document before.

22

(Witness reviewing document.)

23

A. I don't recall it, but I must have

24

seen it.

25

Q. Does it look like a McCaffrey prepared

Pfaff

BY MR. GOLDSTEIN:

Q. If you look on the third page, 532.

A. Uh-huh.

Q. Under "Strategy Phase I," "Exploit the Cohiba name with its reputation as one of the world's finest cigars among cigar smokers to build a brand image for the U.S. project -- product."

Is that referring to the Cuban Cohiba?

A. Yes.

Q. And how was General Cigar, General Cigar and McCaffrey, Ratner, planning on exploiting the Cohiba name?

A. To do terrific advertising with the name Cohiba prominently displayed in it.

Q. And why prominently display the Cohiba name?

A. We do that with any, with any product. I would say the same thing for Macanudo Robust.

Q. But when you say you're going to exploit the Cuban Cohiba name --

A. No, that says "the Cohiba name."

Q. Right. And I asked you about "its

1 Pfaff

2 reputation as one of the world finest cigars,"  
3 and you agreed that that was referring to the  
4 Cuban Cohiba.

5 A. Right. In other words, what it's  
6 saying is to that minority out there who are  
7 aware that there is a cigar named Cohiba and  
8 they've got positive feelings about it, we would  
9 be ringing a bell for them by just presenting  
10 them with here's Cohiba. Here's a Cohiba for  
11 you. At the same time making it clear that it's  
12 a Dominican cigar, not Cuban.

13 Q. And what were you doing to make it  
14 clear that it was a Dominican cigar?

15 A. Every piece of copy said "Origin,  
16 Dominican Republic."

17 Q. What's that?

18 A. Every piece of copy for Cohiba said  
19 "Origin, Dominican Republic."

20 Q. And when it was finally launched in  
21 1997?

22 A. That's right.

23 Q. Was the plan to build General Cigar's  
24 Cohiba brand based on an exploitation of the fame  
25 and reputation of the Cuban cigar?

1 Pfaff

2 A. Well, I think that's going too far.

3 What we were really doing was  
4 presenting people with a new image of a new  
5 cigar, telling them how it's made and why it's  
6 different and why they ought to smoke it.

7 Q. Well, you distinguish between Phase I  
8 and Phase II, and Phase I is to exploit the Cuban  
9 Cohiba name.

10 MS. DORE: Objection.

11 You're misquoting the --

12 MR. GOLDSTEIN: I'm not quoting from  
13 the document, I'm just telling what the  
14 witness has said.

15 BY MR. GOLDSTEIN:

16 Q. And Phase II is to create a brand  
17 image which will allow us to build a line  
18 extension of a brand name into other accessory  
19 products.

20 What I was trying to figure out is,  
21 was Phase I an attempt to exploit the Cuban  
22 Cohiba's fame and reputation in order to get a  
23 foot in the door in the U.S. market?

24 A. The wording is really ridiculous,  
25 'because we were doing both of these jobs at the

1 Pfaff

2 same time. There was no Phase I and no Phase II  
3 about it. They were happening simultaneously.  
4 We were creating a brand name image at the same  
5 time that we were exploiting the Cohiba name.

6 Whoever wrote it should have said part  
7 one. I mean Phase I sounds like we're going to  
8 do this for a year, Phase II we're going to do  
9 this for a year. It was happening at the same  
10 time.

11 Q. Well, this was written in 1993 and  
12 nothing happened until 1997.

13 A. Correct, but it would be happening at  
14 the same time. Whenever the campaign was  
15 launched, this twofold strategy would be being --  
16 would be expressed by the advertising at one and  
17 the same time. There wouldn't be two phases.  
18 And so I don't know who wrote this. It's just a  
19 comedy.

20 Q. On the question of the part that's  
21 called in the document Phase I, which refers to  
22 exploiting the Cohiba name, was the idea here to  
23 use the Cuban Cohiba fame and reputation to get a  
24 foot in the door in the U.S. market?

25 A. Well, as I said earlier, I think

1 Pfaff

2 that's going too far.

3 General Cigar felt they had a great  
4 name. They had the trademark of a great name  
5 Cohiba that was highly accepted by a certain  
6 percentage, albeit minor, of cigar smokers, but  
7 then the thing was to establish a brand image  
8 that was non-Cuban for this Cuban named cigar.  
9 That was the creative problem.

10 Q. Was part of the plan to exploit the  
11 Cohiba name to create a connection in the  
12 consumer's mind between the Cuban Cohiba and the  
13 General Cigar Cohiba?

14 A. No, not at all.

15 Q. Then why were you interested in  
16 exploiting the Cuban Cohiba name?

17 A. Because it was a name with high  
18 acceptance in a certain percentage, albeit minor,  
19 of cigar smokers and they were elite cigar  
20 smokers, if you will.

21 Q. Within that population, though, you  
22 were fairly trying to draw a connection between  
23 your cigar and the Cuban cigar; isn't that  
24 correct?

25 A. Only the name. Only the name, because



1 Pfaff

2 that cigar was different. We weren't trying to  
3 make, remake, or they weren't trying remake or  
4 imitate the making of the cigar. The two cigars  
5 don't taste anything alike.

6 Q. The connection you were trying to draw  
7 was the between the name and not the --

8 A. That's right.

9 Q. -- taste of the cigar?

10 A. That's right.

11 Q. And if we focus on the name rather  
12 than the taste of the cigar, the idea was to  
13 exploit that name connection to generate interest  
14 in the U.S. market in the cigar?

15 A. Yeah. The name was a good name.

16 Q. And the hope was that that would bring  
17 people to the counter?

18 A. Yeah, yeah. I mean Macanudo struck  
19 Edgar Cullman as a great name for a cigar and he  
20 wanted to bring that cigar to the United States.  
21 And I mean the very name is a great name. It's  
22 just a great... Cohiba. It's just wow. It's got  
23 something to it as opposed to Temple Hall, you  
24 know.

25 Q. And recognizing both the name being

1 Pfaff

2 great and the reputation, the fame, General Cigar  
3 decided the best way to market it would be to  
4 exploit the connection between the Cubans and the  
5 General Cigar?

6 A. I don't understand the connection.

7 MS. DORE: Objection. Asked and  
8 answered.

9 BY MR. GOLDSTEIN:

10 Q. You can answer.

11 A. I didn't care for the word  
12 connection.

13 Q. Okay.

14 A. I don't think we're talking about  
15 connection.

16 We're talking about an attractive name  
17 that is attractive for two reasons; the Cuban  
18 notoriety and also the excitement of the word  
19 itself. It's just a great name for a cigar.

20 Q. Do you know whether General Cigar's  
21 decision to choose block letters was part of its  
22 strategy of exploiting the Cohiba name?

23 A. I don't know, but I don't think so. I  
24 don't think so. There are only two families of  
25 type faces; one is a Gothic and one is Roman.

1 Pfaff

2 This has a Gothic face, thick and  
3 thin. The one that we've been looking at that  
4 was offered for trademark approval was Gothic,  
5 non-thick and thin. They're similar in impact,  
6 but they're not the same.

7 But I wouldn't ever have suggested  
8 that anybody take this name and suddenly make it  
9 a capital C lower case o-h-i-b-a or what have  
10 you. The word, just from an artistic point of  
11 view, a creative point of view, it wants to be a  
12 kind of strong, Gothic-type statement.

13 In fact, I think the thick and thin  
14 weakens it in the Cuban version myself.

15 MR. GOLDSTEIN: Why don't we mark  
16 this.

17 You want to take a break?

18 MS. DORE: If you're going to mark  
19 more exhibits then...

20 MR. GOLDSTEIN: Let me... Let me just  
21 ask a couple more questions about this  
22 document and then we'll stop to take a  
23 break.

24 BY MR. GOLDSTEIN:

25 Q. If you turn to page 538.

1 Pfaff

2 produce it. We didn't get the okay to produce it  
3 until much later, even though the content here  
4 was well received, you know? But they still  
5 didn't have a cigar.

6 Q. And --

7 A. Let me make one thing very clear. If  
8 General Cigar had never satisfied itself that it  
9 had a cigar worth marketing, they would never  
10 have okayed the campaign. They would never have  
11 launched the Cohiba cigar. Everything depended  
12 on getting the cigar right.

13 Q. What specific things were done as part  
14 of the advertising campaign to exploit the Cohiba  
15 name with its reputation as one of the world's  
16 finest cigars?

17 A. What on this list?

18 Q. What specific things were done as part  
19 of the advertising?

20 A. Okay.

21 Q. Not necessarily on the list, but in  
22 terms of how the advertising was framed.

23 A. You mean what it looked like or what?  
24 I'm not understanding.

25 Q. Let me strike that question. I'll

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Pfaff

A F T E R N O O N      S E S S I O N

(Time noted: 1:40 p.m.)

W A R R E N      P F A F F,      resumed and testified  
as follows:

CONTINUED EXAMINATION

MR. GOLDSTEIN:

Q.      I just have a couple more questions  
about the document that was marked Plaintiff's  
Exhibit 7, which on the front page has the word  
"Cohiba."

I wanted you to look, if you could, at  
MC 534, which is "Future Marketing Goals for  
Cohiba."

A.      Uh-huh.

Q.      And the first paragraph states, "It is  
important for the company to preempt the possible  
future introduction of any Cuban manufactured  
cigars by positioning the Cohiba brand name in  
the marketplace in the U.S.A. General Cigar  
would then 'own' the brand name that is perceived  
as the best of the Cuban brand names." Do you  
know who wrote that statement?

1 Pfaff

2 A. I do not.

3 Q. Do you recall any discussions about  
4 that statement?

5 A. I don't.

6 Q. Do you recall any discussions with  
7 someone from General Cigar regarding owning the  
8 brand, the brand name for Cohiba?

9 A. No. I mean it was just a fact that  
10 they had the trademark, you know. I think this  
11 is somebody's interpretation of or what have you,  
12 but I don't recall any discussion about that.

13 Q. Do you recall any discussions in this  
14 '93 time period with Ross Wollen, an attorney  
15 for General Cigar regarding trademark and  
16 trademark ownership?

17 A. Once, and it was -- it had to do with  
18 the wording, the trademark wording for Cohiba,  
19 however we wound up saying registered trademark  
20 of General Cigar company, however it was, but it  
21 was a legal way to say that and that was the only  
22 conversation I ever had with him about it.

23 Q. Do you recall if that was in the '93  
24 period or the '97 period?

25 A. It was toward '97 when we were getting

Pfaff

seeing this Phase I, Phase II stuff. It's baloney.

MR. GOLDSTEIN: Let's mark this.

(Plaintiff's Exhibit 10, Creative Strategy Development Statement dated 6-29-93, marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you a document marked Plaintiff's Exhibit 10. It has the numbers MC 683 through 686. It's titled "Creative Strategy Development Statement" with the date of June 29, 1993.

I ask you if you've seen this document before.

(Witness reviewing document.)

A. I don't recall this.

Q. AES --

A. That does not mean that I didn't see it.

Q. You just don't recall it?

Is this in the form of a doc -- typical form of a document when you're preparing an ad campaign, creative strategy development

1 Pfaff

2 statement?

3 A. Yeah. He did it in his own way. Sam,  
4 according to this, wrote it.

5 No, I wouldn't have written it,  
6 written it this way, but it's typical. Different  
7 people do them in different ways.

8 Q. But this indicates it was prepared by  
9 Sam Ratner?

10 A. It seems to indicate that. It says  
11 "AES Ratner" and his is the only name on it, so  
12 it seems to be. That's an odd way of indicating  
13 the writer. Ordinarily -- yeah, usually you  
14 don't get the writer's name on a strategy  
15 development statement. It's just, you know, the  
16 agency's position.

17 Q. Do you know if this document went to  
18 General Cigar?

19 A. I don't know.

20 Q. In the form it's in, is this how you  
21 would send a document to General Cigar?

22 A. It could have been, although even this  
23 is whacky. This is vertical format and then  
24 suddenly going to a horizontal format. It  
25 doesn't look very professional, so it may have



1 Pfaff

2 been used for only internal purposes. I don't  
3 know.

4 Q. And on the right-hand side it has  
5 "Approval" and there's two sets of initials, AS  
6 and CD.

7 Do you know what that stands for?

8 A. That doesn't ring any bell with me.

9 Q. I mean is it a title as opposed to a  
10 person, like creative designer?

11 A. That's what I'm trying to think. I  
12 have no idea what those initials mean.

13 Q. Okay. If you look down at sort of the  
14 second bolded paragraph, "Current Positioning  
15 Statement, if any." It states that "The only  
16 Cohiba cigar known today by American males is one  
17 made in Cuba that cannot, with rare exception, be  
18 legally purchased within the U.S."

19 Did you have any discussion about that  
20 statement?

21 A. Well, it's not totally accurate.

22 Q. When you say "it's not totally  
23 accurate" --

24 A. Well, there was another Cuban cigar at  
25 That time. It wasn't known by many people, but

1 Pfaff

2 (Witness complies.)

3 A. No, I don't recognize that  
4 handwriting.

5 Q. I might as well ask you this: On the  
6 first page it's written, "What is a premium  
7 cigar," so I'll ask you, what is a premium  
8 cigar?

9 A. What is a premium cigar?

10 Q. Yes.

11 A. A premium cigar is an expensive,  
12 handmade cigar, invariably imported.

13 Q. Is there like a defining  
14 characteristic for it to be premium?

15 In other words, is it below or above a  
16 certain price?

17 A. Yes. Price point, of course it varies  
18 as the economy shifts around, but today I would  
19 say a, it's like \$3 and up.

20 Q. And in '93, do you know about what it  
21 would have been considered?

22 A. It might have been slightly below  
23 three at that time. That would be the low end,  
24 you know. \$2.75, in there.

25 Q. And then I'm not going to mark this,

Pfaff

I'm just going to ask you -- I'm going to show you MC 1033, which is one of the documents we received yesterday.

If you can just tell me whose handwriting that is.

A. That's mine.

Q. That's your handwriting.

MR. GOLDSTEIN: I guess I will mark it then.

(Plaintiff's Exhibit 12, Document entitled "Chobia Launch," marked for identification, as of this date.)

BY MR. GOLDSTEIN:

Q. I'm showing you one page marked Plaintiff's Exhibit 12, which is --

A. Isn't this the same piece?

Q. Yeah, it's the same document we were just looking at.

MC 1033, you stated that the handwriting is yours.

A. Yes.

Q. Do you know if this was something you did in 1993?

A. I certainly believe so, yeah.

Pfaff

1

2

"QUESTION: In 1993, did McCaffrey

3

make any recommendations to General Cigar

4

regarding a band for their Cohiba cigars?")

5

A. Well, we weren't in on the packaging.

6

We made comments and some notable suggestions,

7

which I mentioned earlier; stayed away from the

8

yellow and we were the ones who proposed this red

9

dot in the O to further distinguish it from the

10

Cuban Cohiba.

11

Q. So to your recollection, you made no

12

recommendations regarding a band in 1993?

13

A. We could have, but if we did, at a

14

later point they took that over. We never played

15

a packaging role for this client and they turned

16

to other people for that as a rule, but we could

17

have said well, here are a couple of ideas. You

18

know, something like that.

19

Q. But you don't recall?

20

A. No.

21

Q. Do you recall saying anything about

22

the red dot in the 1993?

23

A. No. That was quite a bit later, I

24

believe.

25

Q. Did you make any recommendations

1 Pfaff

2 it's often called, in the box itself.

3 MR. GOLDSTEIN: Let's mark this then.

4 THE WITNESS: No, I don't recall ever  
5 seeing that piece of art. Geez.

6 THE WITNESS: Did you take a look at  
7 that?

8 MS. DORE: I've seen it.

9 MR. GOLDSTEIN: We're marking the old  
10 label of the General Cigar Cohibas  
11 Plaintiff's Exhibit 13.

12 And could you mark this document?

13 (Plaintiff's Exhibit 13, Old General  
14 Cigar Cohiba label, marked for  
15 identification, as of this date.)

16 (Plaintiff's Exhibit 14, Request for  
17 Extension of Time and attachments, marked  
18 for identification, as of this date.)

19 BY MR. GOLDSTEIN:

20 Q. I'm showing you what's been marked as  
21 plaintiff's Exhibit 14. Actually, what got  
22 marked was the third page of a document, 6245.  
23 The 6247 is a GC document. It's a Request for  
24 Extension of Time filed by attorneys for General  
25 Cigar signed by Ross Wollen.

1 Pfaff

2 The third page, the one I'm interested  
3 in, is a document labeled "Photocopy of cover of  
4 box containing the goods." And it's a photocopy  
5 of the cover of the Cohiba box, and the document  
6 itself is dated, the lawyer's document is dated  
7 January 3rd, 1995.

8 A. I see July 5th, 1994 here.

9 Q. Well, it is a Notice of Allowance.  
10 I'm talking about the signature date.

11 A. Oh, the signature. Uh-huh.

12 Q. Focusing on the photocopy, the  
13 document at 6247, have you seen that cover of the  
14 Cohiba box?

15 A. I don't recall.

16 Q. Do you know if McCaffrey recommended  
17 to General Cigar that it include either Dominican  
18 Republic or Santo Domingo or some other Dominican  
19 Republic identifier on the cover?

20 A. On the cover of the box?

21 Q. Yes. In 1993.

22 A. Yeah. No, I don't recall.

23 Q. Do you know why General Cigar put the  
24 word "Cohiba" in the bottom right?

25 A. I can't imagine. Just an artistic

Pfaff

1

2

decision.

3

Q. I'm going to show you Plaintiff's

4

Exhibit 4, which was previously marked. It's the

5

cover of the Cuban Cohiba.

6

A. Uh-huh.

7

Q. It also has the label on the bottom

8

right.

9

A. Uh-huh.

10

Q. Do you know if that positioning of the

11

label of the Cuban Cohiba had any influence on

12

the positioning of the label of the General Cigar

13

Cohiba?

14

A. I don't know.

15

Q. Both of the labels use a block

16

lettering.

17

Is that lettering common in the

18

premium imported cigar industry?

19

A. I couldn't say it is or it isn't.

20

Q. Is that the kind of lettering used by

21

Partagas, the General Cigar Partagas?

22

A. Partagas uses several kinds of

23

lettering, but in one style we do have that,

24

Macanudo, very similar to this.

25

Q. When did Macanudo introduce its, a

1 Pfaff

2 style you say that's very similar to that?

3 A. Well, Macanudo is written in various  
4 ways on the box, and in the advertising we tend  
5 to -- we have Macanudo like this (indicating).

6 Q. Well, what about on the box?

7 A. On the box, one of them, one version  
8 is in this Gothic style. There are about five  
9 different ways that Macanudo is done on the box.

10 Q. You would not describe this block  
11 lettering that's used by the two Cohibas as a  
12 unique look, a modern look that's unusual for  
13 premium imported cigars?

14 A. No. To me, I mean frankly that could  
15 be used for Mack trucks just as easily as Cohiba  
16 cigars.

17 Q. What I'm asking is, is that a unique  
18 form of labeling for cigars? Most cigars are not  
19 labeled in that, what you might call a modern  
20 block look?

21 A. I don't think I could say that. I  
22 think there are a lot of different styles out  
23 there, a lot of different styles.

24 Q. Given all the different styles, would  
25 you say that those two look very similar?



1

Pfaff

2

A. They certainly do.

3

4

5

Q. Do you know who does General Cigar's like box designs? You say it's not really done by McCaffrey.

6

7

8

9

A. I actually -- no, I don't. They may use the same group and they may use different groups, so I don't know who worked on the -- on Cohiba.

10

11

Q. Do you know who does Macanudo and Partagas?

12

13

14

A. Well, that was done ages and ages ago. The Partagas box was designed by somebody in Cuba ages ago, did it for Ramon Cifuentes.

15

16

Q. So you don't have the names of anybody who does GC design work?

17

A. No.

18

19

20

Q. Is the design of the -- do you have any knowledge of who would have to pass on the designs at General Cigar?

21

22

23

24

I mean is it something that would go all the way to Edgar Cullman, if you know, or is it something that would probably stop more at a mid level marketing person, if you know?

25

MS. DORE: Design of what?

1 Pfaff

2 MR. GOLDSTEIN: A box design.

3 A. I don't know for certain, but my  
4 guess -- well, I would think that it's much from  
5 bottom to top, it would have to be approved by  
6 everybody.

7 Q. In part of your work for General Cigar  
8 generally, do you meet with Mr. Cullman, Jr.?

9 A. From time to time.

10 Q. Was he involved on the Cohiba matter  
11 in the 1993 time period?

12 When I say "involved," did you have  
13 discussions?

14 A. Not directly with us. I think he was  
15 in touch with Austin McNamara. Our meetings were  
16 with Austin and his people.

17 Q. Do you recall any communications from  
18 them to you in the 19 -- them, General Cigar, to  
19 McCaffrey, in the '93 period, Mr. Cullman or  
20 Edgar, whatever he's called, Mr. Cullman wants  
21 this or doesn't like that?

22 A. I don't recall, no. It could have  
23 been.

24 Q. Do you recall General Cigar generally  
25 approving or disapproving of specific parts of

1 Pfaff

2 the '93 proposals?

3 A. They approved them in general, but the  
4 final strategy and the final advertising were  
5 worded very differently from '93.

6 Q. What happened in '93? What ended the  
7 project? Did it -- let me strike the question.  
8 Start over.

9 Were you told to stop working on  
10 Cohiba at some point?

11 A. Yes, we were. I don't know who told  
12 us or exactly when, but we certainly were. They  
13 didn't want us to put more time in on it and they  
14 were satisfied with what they had seen thus far,  
15 but they didn't want us to put more time in it  
16 until they proved that they had the cigar.

17 Q. And you don't recall who told you to  
18 stop working?

19 A. No. It could have -- I mean the  
20 message could have come from John Geoghegan, it  
21 could have come from John Rano, it could have  
22 come directly from Austin McNamara. It went on.

23 Q. Let me represent to you the only dated  
24 documents that I found from McCaffrey that have a  
25 1993 date are the ones that you've looked at

Pfaff

two-and-a-half years in there where we weren't asked to do anything, but that's an estimate.

Q. From the time that you were told to stop to the time when you were told to start again, were there any discussions about Cohiba with General Cigar?

A. No, just flat. We went on -- we had plenty of other work to do for General Cigar.

Q. So it stopped and then it started?

A. That's right. Right.

Q. Was there internal discussion at McCaffrey about it?

A. No, just laments that, you know, you look over a layout, God, I wish we were running that, wish we could produce that ad. That's all.

Q. Do you recall how it came that you started to work on Cohiba matters again?

A. How it came about?

Q. Yes.

A. I don't recall.

Q. Did you have any discussions in preparation for your deposition with Mr. McCaffrey, Mr. Ratner, how did we start

1 Pfaff

2 was key.

3 How much sooner than April we were  
4 working again on Cohiba, I can't recall.

5 MR. GOLDSTEIN: Let's mark this  
6 document.

7 (Plaintiff's Exhibit 16, Advertising  
8 Strategy dated 3-5-97, marked for  
9 identification, as of this date.)

10 BY MR. GOLDSTEIN:

11 Q. I'm going to show you what's been  
12 marked as Plaintiff's Exhibit 16. It's a March  
13 5, 1997 document coming from the MC files, the  
14 McCaffrey files, 324. I'll represent to you that  
15 that's the earliest date that we have on a  
16 document from McCaffrey's files for 1997. I  
17 don't know if that helps you as to when you were  
18 involved, became involved or not.

19 A. This is a strategy written by the  
20 client.

21 Q. This document was written by the  
22 client.

23 A. While I don't recall it, I certainly  
24 would have seen it.

25 Q. Do you know who it would have been

1

Pfaff

2

prepared by?

3

A. Oh, I'm quite certain this would be

4

John Geoghegan.

5

By the way, he pronounces it Gaygan

6

(phonetic).

7

Q: Gaygan (phonetic)?

8

A. Yeah. It's spelled Geoghegan, but

9

it's Gaygan (phonetic). I don't know why.

10

Yeah, this is his work, and this was

11

not the final strategy. I wrote the final

12

strategy.

13

Q. Does that suggest -- does this

14

document in any way -- strike the question.

15

Based on this document, does it

16

refresh your recollection as to when you may have

17

started, McCaffrey may have started, working on

18

the project, the Cohiba project?

19

A. No, it doesn't help.

20

Q. If you started working on the project

21

in 1996, should I have documents from that time

22

period?

23

A. Well, not necessarily. I mean there

24

weren't memos going around. It was writing copy,

25

lyrics, doing layouts, and once those things get

1 Pfaff

2 Q. Are you aware of any plans to do work  
3 on Cohiba now or in the near future?

4 A. Not at the present time do I have any  
5 knowledge.

6 Q. Do you know if the media budget or the  
7 overall, let me just call it the launch budget  
8 for 1997, did that increase over time or was it  
9 we're going to spend this amount and that's  
10 basically what you spent?

11 A. I have no idea.

12 Q. That would be in the General Cigar  
13 side of things?

14 A. Yes.

15 Q. I have budget documents and they are  
16 from different files, so I'm not sure who played  
17 what role.

18 Let me show you what we had just  
19 marked as Plaintiff's Exhibit 18, and it's an MC  
20 656 to 660.

21 And I don't know if it's the first  
22 page, it's the form in which we have it, and it  
23 has 1997 written on the bottom. There's a little  
24 bit of handwriting.

25 Have you seen this document before?

1 Pfaff

2 A. This does not look familiar, but like  
3 so many others, I could have seen it.

4 Q. Does it look like a McCaffrey prepared  
5 document?

6 (Witness reviewing document.)

7 A. This looks like a client prepared  
8 document, very definitely.

9 Q. And do you recall reviewing this  
10 document with the client?

11 A. I don't.

12 Q. Do you know who with the client would  
13 have prepared this?

14 A. Looks like Geoghegan.

15 Q. Now, on the time line, the first due  
16 date is March 15th, 1997, although the document  
17 itself doesn't have a date.

18 A. What page are you on?

19 Q. Page, I'm sorry, 658.

20 A. March 15th?

21 Q. Yeah.

22 It says, "Develop blended product.  
23 Rano May of 1997."

24 Do you know when the blended product  
25 was developed?



1 Pfaff

2 A. That's a good question.

3 Well, on the Hanson, Krol, Morris, I  
4 can't identify those three.

5 Q. Okay. But you don't know them as a  
6 design firm?

7 A. No.

8 Q. Okay.

9 A. But then down below it says, "Begin  
10 manufacturing cigars" and Hanson and Krol are  
11 down there.

12 Q. Right.

13 A. -- too so...

14 Q. And they're in the manufacturing or  
15 packing?

16 A. It would seem that they're all  
17 internal.

18 Q. Okay. This next page, 659, this  
19 "Strategy Selection Outline," "Brand Strategies"  
20 and then it has a list of strategies one through  
21 five, did McCaffrey, Ratner participate in the  
22 creation of that; if not the specific document,  
23 at least this, these strategies?

24 A. This strikes me as almost totally  
25 Geoghegan.

1 Pfaff

2 Q. In terms of the style?

3 A. Yeah, and the thinking. "Larger than  
4 life." I recognize some of it. "Your own man,"  
5 we wouldn't have come up with that.

6 Q. In the "Brand Strategies," the second  
7 line is "Leverage the mystique and scarcity of  
8 Cohiba brand cigars into related categories."

9 Do you know what -- which Cohiba he's  
10 referring to by the mystique and scarcity?

11 A. You'd have to ask him to be sure.

12 Q. Was there any mystique or scarcity of  
13 General Cigar's cigars in 1997?

14 A. I'd say it was mighty scarce.

15 Q. Would you say there was a mystique?

16 In 1997, was it fair to say as to the  
17 two Cohibas, it was the Cuban Cohiba that had a  
18 mystique?

19 A. Well, that's a subjective thing any  
20 way you look at it, but it seems to me the whole  
21 context here, this entire thing is the launch of  
22 the new Cohiba.

23 Q. I'm aware the document concerns the  
24 launch of the General Cigar Cohiba, but the  
25 leveraging of the mystique of the Cohiba brand,

1

Pfaff

2

3

Again, do you know what mystique of the Cohiba name he's referring to?

4

5

MS. DORE: Don't speculate as to what somebody else meant.

6

A. I can't speculate on that.

7

8

9

Q. Was there any discussions between General Cigar and McCaffrey, Ratner regarding the mystique of the Cohiba name?

10

11

12

13

14

15

A. Well, we felt the name was a highly attractive name as a name, as I said this morning; as a name in itself. It lent itself to all kinds of things; a lipstick, a song, a dance. It was, just had that energy about it, to us.

16

17

18

19

20

And on top of it, yes, of course the Cuban fame of the Cuban cigar itself. While that was not major fame, nonetheless, the fame was very strong with a coterie of well-informed cigar smokers.

21

22

23

Q. In 1997, is it your testimony that Cohiba cigar was not the most famous cigar in the world?

24

25

A. The most famous? I don't know. Anybody could make an argument for Macanudo or

1 Pfaff

2 Montecristo.

3 Somebody on the other hand, could  
4 easily make an argument for Cohiba, but...  
5 Montecristo is the number one cigar in the  
6 world.

7 Q. You would agree that Cohiba was one of  
8 the most famous cigars in the world?

9 A. Yes.

10 Q. And I'm talking about the Cuban Cohiba  
11 in 1997, prior to your launch.

12 A. Well, again, I just qualify it with  
13 that pocket of cigar smokers. The most informed  
14 cigar smokers were well aware of Cohiba.

15 On the other hand, many more cigar  
16 smokers were certainly aware of Montecristo, and  
17 Macanudo for that matter. Everybody knows  
18 Macanudo. Not everybody to this day knows  
19 Cohiba.

20 Q. Among premium cigar smokers worldwide,  
21 would you agree that the Cuban Cohiba was one of  
22 the most famous cigars in 1997?

23 MS. DORE: Can I hear the question  
24 again, please?

25 (Question was read back as follows:

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Pfaff

MS. DORE: Go ahead and answer it, if  
you can.

A. Well, you know, was it one of the ten  
most famous? Sure.

Was it one of the two most famous?  
I'm not so sure.

It's a pretty well-known cigar, a  
pretty well-known cigar. I have no handle on  
people's knowledge in England, France or  
whatever, overseas about it or whatsoever.

The only understanding that I've  
really got is that Cigar Aficionado gave it a lot  
of space.

Q. Would you --

A. And he reaches today, he's got like a  
circulation of 280,000 something. So that's not  
a huge world. Tops, his circulation was like  
325,000. It's not a huge universe.

Q. Is Cigar Aficionado considered an  
important cigar industry magazine?

A. Well, it's not an industry magazine,  
but it's the best place to advertise cigars if  
you want to reach a concentrated number of cigar  
smokers. It's very expensive to reach cigar

Pfaff

smokers through Business Week and Forbes and Fortune, and so you're paying for a lot of waste.

Q. Is Cigar Aficionado considered an intellectual magazine within the cigar industry?

A. I think so.

Q. Is it fair to attribute -- well, let me strike that.

There's been -- there was a substantial upswing in the sales of premium cigars in the United States between 1993 and 1998; is that correct?

A. Correct.

Q. And is Cigar Aficionado being given some of the credit for that upswing in consumption in the United States of premium cigars?

A. It has been, but I think in large measure erroneously. I think the reason that it has been given this kind of credit is because nobody can explain this cigar renaissance. No one saw it coming, no one was prepared for it.

And a far greater impetus than Cigar Aficionado was the profusion of other magazines that were running cover shots of Bill Cosby

Pfaff

1  
2 smoking a cigar, David Letterman smoking a cigar,  
3 Arnold Schwarzenegger smoking a cigar, Lee  
4 Iacocca smoking a cigar. One after the other.  
5 Even Frank Steller on the cover of Art News  
6 smoking a cigar. And these things were coming up  
7 like weeds.

8 And on television, there was David  
9 Letterman with a cigar, there was Bill Cosby with  
10 a cigar, guests on various programs were smoking  
11 cigars, and instead of the old image of Edward G.  
12 Robinson with a chewed up cigar in one side of  
13 his mouth as he played a gangster being the cigar  
14 image, all of a sudden the hottest tickets in  
15 Hollywood were on to premium cigars; Jack  
16 Nicholson, you name it. They all were doing it,  
17 and existing athletes. Michael Jordan revealed  
18 to be a big cigar smoker, et cetera. Hey, I like  
19 Mike, and he likes cigars. This was sweeping.

20 Even Marvin, who likes to take credit  
21 for an awful lot of things, will at least say  
22 well, I came along at the right time.

23 Q. Marvin, you mean Marvin Shankin from  
24 Cigar Aficionado?

25 A. Right. So I think that he has helped

Pfaff

1

2 promote it through his cigar smokes where people  
3 get a lot of free cigars and so forth. That's  
4 been a big promotion for the industry. But the  
5 magazine itself, no.

6

7

8

9

Q. Are you aware that General Cigar, in  
SEC filings, has credited the upswing in cigar  
consumption in the United States in part to Cigar  
Aficionado?

10

11

A. And I disagree with them. See, again,  
they didn't know where --

12

13

MS. DORE: There isn't a question  
pending. You answered the question.

14

BY MR. GOLDSTEIN:

15

16

17

18

19

Q. Were you aware of a study done, I  
don't know if study is the right word, but  
testing done, market testing, of a group of men  
in March of 1997 as part of the Cohiba  
advertising launch preparation?

20

A. Where was that done?

21

Q. In Chicago.

22

A. Yes.

23

24

Q. And did McCaffrey, Ratner play any  
role in that testing or tasting?

25

A. I am very hazy on that. I looked at



1 Pfaff

2 that material yesterday. It didn't look familiar  
3 to me. And the client kind of took over that,  
4 because the three things, the three approaches  
5 that were given to the prospects were, I believe,  
6 created by the client. They weren't created by  
7 us. I would never have approved them. They have  
8 like short headlines.

9 MR. GOLDSTEIN: Let's mark this  
10 document as an exhibit.

11 (Plaintiff's Exhibit 19, Project  
12 Background, marked for identification, as of  
13 this date.)

14 BY MR. GOLDSTEIN:

15 Q. I'm marking a document, marked a  
16 document as Plaintiff's Exhibit 19. It's Project  
17 Background. It doesn't have a date, although it  
18 has a fax line of April 8, 1997.

19 MS. DORE: Can you identify it by  
20 document number.

21 MR. GOLDSTEIN: MC 310 to 317 and it's  
22 called Project Background.

23 BY MR. GOLDSTEIN:

24 Q. On the bottom of the first page  
25 there's "Three tested positioning statements."

1 Pfaff

2 Is that -- on page 310, is that what  
3 you were referring to?

4 A. No. I'm not saying the page that --

5 Q. If you go to the first page.

6 A. -- I was talking about.

7 The first page?

8 Q. Yeah. It says "Three tested  
9 positioning statements."

10 A. Oh, okay. Yes. Okay. I saw it in a  
11 different form. Yeah, these are the three things  
12 I was talking about.

13 Q. And it's your understanding that these  
14 were created by the client, not by McCaffrey?

15 A. Well, the second one was created  
16 partially by us, but the others were not.  
17 They're cliches.

18 Q. Do you know who created them?

19 A. I have a pretty good guess.

20 Q. You want to tell me?

21 A. John Geoghegan.

22 Q. Do you know who Amy Lineberger is?

23 A. Amy was John Rano's secretary.

24 Q. Someone at General Cigar?

25 A. At General Cigar.

1 Pfaff

2 Q. And Ruth Straley?

3 A. Ruth Straley was John Geoghegan's  
4 secretary.

5 Q. My understanding from reading through  
6 these documents is that Christina...

7 A. Keaveney.

8 Q. Keaveney was there at this Chicago  
9 testing?

10 A. That sounds -- yeah, that sounds  
11 right.

12 Q. Did you ever discuss this with her,  
13 the tasting, testing?

14 A. No. I'm sure we saw this and there  
15 wasn't much to discuss.

16 Q. Did you base any of your advertising  
17 on the results of this testing?

18 A. The only thing that I can comment on  
19 offhand, he stuck in a semblance of the line that  
20 I wound up using, but I can't tell you whether I  
21 wrote the line before or after this. I think I  
22 wrote it before this, "a world beyond other  
23 stratas," and he's echoed it, "a world unto  
24 itself" here. . Other than that, I think we were  
25 very disappointed with this, that it had gone

1 Pfaff

2 ahead. I mean we would never have advocated a  
3 position "the pleasure of the best."

4 And also, this business about they  
5 gave Havana its mystique, I mean if anything, we  
6 were trying to go further and further away from  
7 that.

8 Q. But the client was preparing something  
9 going --

10 A. Yeah. He kept on coming up with this  
11 Havana and mystique. He did it again and again.  
12 We've seen that on other pages. That's how I'm,  
13 how I'm identifying some of it as his.

14 Q. Do you recall if the results of these,  
15 this test, was discussed at McCaffrey, Ratner in  
16 terms of changing, validating, unvalidating,  
17 proposed ad copy?

18 A. No. I don't recall that it was given  
19 an awful lot of credence. There was nothing  
20 earth-shaking here.

21 We were upset that the Cohiba is not  
22 an island was presented poorly, because we  
23 thought it was very strong, but it had to be seen  
24 in context and he took it out of context, and so  
25 that we were upset about.

1 Pfaff

2 Q. What was the context that it would  
3 have to be seen in when you said it had to be  
4 seen in context?

5 A. Well, it's just the whole attitude,  
6 the whole look of the advertising. It drew you  
7 in, but to just see the line on a piece of paper,  
8 these people said, that doesn't mean anything to  
9 me, you know. So anyway, we dropped it.

10 Q. Was it going to be -- were they going  
11 to see an island, I guess is what I'm trying to  
12 say?

13 A. We had two or three different ways we  
14 looked at it, and I just can't remember exactly  
15 what they looked like.

16 Q. Did they look like Cuba?

17 A. No. No way. No way. We had been  
18 determined to be non-Cuban, non-Havana. We were  
19 certainly more so after the discussion or the  
20 business with Cubatabaco. I mean that would only  
21 have made us even more determined to stay away  
22 from Cuba and any direct associations.

23 Q. That's what I've been trying to ask  
24 before, whether you recall any specific  
25 discussions between January and the launch as to

Pfaff

this lawsuit or this proceeding by Cubatabaco and whether that influenced in any way the ad campaign?

MS. DORE: Which proceeding are you talking about?

BY MR. GOLDSTEIN:

Q. In January of 1997, Cubatabaco filed a proceeding with the trademark board to cancel General Cigar's Cohiba mark, and what I was trying to get at was, do you recall specific discussions in which you were made aware of that and that that in some way influenced the nature of the advertising.

A. Well, you know, for example, when Ross Wollen directed us in how to word trademark copy, we knew that it was sensitive, and so since our initial thing was to stay away from Havana, that was another reason. And we couldn't get over the fact that we kept looking at pages of stuff that had Havana in it that came from the client itself, but it wasn't anything that we needed to discuss in detail.

Q. Did that suggest to you that the client wanted to draw an association between Cuba

1 Pfaff

2 and the Cohiba?

3 A. Well, certainly this particular writer  
4 did, and he's doing that at a pretty late date.

5 MR. GOLDSTEIN: Let's mark --

6 MS. DORE: Before you go on to another  
7 document, can we take a break?

8 MR. GOLDSTEIN: Sure.

9 (Recess is taken.)

10 (Plaintiff's Exhibit 20, Memo dated  
11 3-12-97 from Lineberger to Rano and  
12 Geoghegan and attachment, marked for  
13 identification, as of this date.)

14 BY MR. GOLDSTEIN:

15 Q. Let me show you what's been marked as  
16 Plaintiff's Exhibit 20.

17 MS. DORE: Can you identify the  
18 document on the record?

19 MR. GOLDSTEIN: It's a memo dated  
20 March 12th from Amy Lineberger to John Rano  
21 and John Geoghegan, MC 292 to 294, with a  
22 copy to Ruth Straley and there's a Post-It  
23 fax from Amy to Christina at McCaffrey.

24 BY MR. GOLDSTEIN:

25 Q. Have you seen that document before?

1 Pfaff

2 A. Well, I don't recall that we had ever  
3 gotten to okay it before it went to Chicago.

4 Q. Not even limited to the Chicago point,  
5 but just you were criticizing some of the  
6 comments that Geoghegan that -- some of  
7 Geoghegan's statements?

8 A. Yes. Those three positions we didn't  
9 agree with, but we never were asked for any  
10 opinions, to my knowledge.

11 Q. In the Cullman to Lineberger memo,  
12 there's a statement in the first paragraph, "What  
13 we can get from the qualitative is current brand  
14 perception and breadth of brand halo for the  
15 Cuban Cohiba versus other brands of cigars, Cuban  
16 and otherwise."

17 What is a brand halo? Is that a term  
18 that has meaning?

19 A. It's not a term that I've ever heard  
20 used before.

21 Q. Do you know what it means?

22 A. I think Lois Hinkel knows what it  
23 means.

24 Q. Lois Cullman?

25 A. Yeah, Lois Hinkel Cullman.



1 Pfaff

2 Q. If you would turn back to the one, the  
3 document marked Plaintiff's Exhibit 19.

4 (Witness complies.)

5 Q. Does yours have marking on it?

6 I either gave you my copy, I may have  
7 had my copy marked or I didn't mark it.

8 MS. DORE: This one is clean.

9 Q. There's no marking on this one. I  
10 don't know if I marked it on --

11 A. This one looks clean.

12 Q. Any yellow or blue?

13 MS. DORE: No.

14 BY MR. GOLDSTEIN:

15 Q. Then I didn't do anything to any of  
16 them.

17 Look at the last page.

18 A. Yes.

19 Q. And if that's clean, then they're both  
20 clean and a dirty one is somewhere else.

21 Do you know -- well, let me ask you  
22 first: Do you know who wrote this document,  
23 Project Background?

24 A. I don't.

25 Q. And the "Concluding Thoughts," I take

1 Pfaff

2 it you don't know who wrote that either?

3 A. I don't know for sure.

4 Q. In the second paragraph under  
5 "Concluding Thoughts" it says, "More subtle  
6 references to Cuba seem to work better than more  
7 obvious ones that could sound defensive,  
8 apologetic or gimmicky to some smokers. The  
9 less we try to directly compare our cigar to the  
10 Cuban version, the less it will be perceived as  
11 an imitation."

12 Do you recall having any discussions  
13 about those results or those thoughts?

14 A. I don't. I'm sure it was discussed.  
15 No, I don't recall.

16 Q. Do you know as a result of this,  
17 partly as a result of this test or this testing,  
18 that a decision was made to make more subtle  
19 rather than more obvious references to Cuba?

20 A. Well, we didn't wish to make  
21 references to Cuba and this helped our position.

22 Q. Was the idea as a result of this to  
23 make more subtle references to Cuba?

24 A. Oh, no. No. I mean the only Cuban  
25 reference we had was Cuban seed.

1 Pfaff

2 Q. When you say you're sure this was  
3 discussed but you don't recall, do you have any  
4 memory of talking about direct versus subtle  
5 references to Cuba?

6 A. No, I don't recall.

7 Q. And then in the last paragraph it  
8 says, "Smokers clearly like the tobacco blend we  
9 tested."

10 Does that refresh your recollection  
11 whether there was a cigar testing or not and  
12 whether it was...

13 A. Okay. The point is this; they  
14 definitely tried it.

15 Q. And then it says, "There's the  
16 widespread perception that Cohiba is a very  
17 Robust cigar and this blend is not perceived to  
18 be strong."

19 Do you have knowledge over whether  
20 that's referring to a widespread perception  
21 regarding the Cuban Cohiba as being robust or the  
22 General Cigar being sold in the Dunhill shops as  
23 being a robust cigar?

24 MS. DORE: Can I have the exact  
25 question, please.

1 Pfaff

2 (Question was read back as follows:

3 "QUESTION: Do you have knowledge over  
4 whether that's referring to a widespread  
5 perception regarding the Cuban Cohiba as  
6 being robust or the General Cigar being sold  
7 in the Dunhill shops as being a robust  
8 cigar?")

9 MS. DORE: Do you know what this  
10 writer is referring to I think is what he's  
11 asking.

12 A. Well, in the context of the whole  
13 piece here, I mean the whole thing is about the  
14 Cuban version, so I would have to say he's  
15 referring to the Cuban cigar.

16 MR. GOLDSTEIN: Let's mark this  
17 document.

18 (Plaintiff's Exhibit 21, General Cigar  
19 Company, Inc. Product Development Proposal  
20 Project titled "Cohiba Brand Cigars", marked  
21 for identification, as of this date.)

22 BY MR. GOLDSTEIN:

23 Q. I'm showing you what's been marked as  
24 Plaintiff's Exhibit 21, General Cigar Company,  
25 Inc. Product Development Proposal Project titled

1 Pfaff

2 "Cohiba Brand Cigars," and it's MC 198 to 201.

3 Have you seen this document?

4 MS. DORE: Let me finish looking at it  
5 first.

6 (Counsel reviewing document.)

7 BY MR. GOLDSTEIN:

8 Q. Do you recall seeing this document?

9 A. I don't, but I would think that this  
10 had been shared with us, but it doesn't  
11 necessarily say that it went to the agency.

12 Q. No. It has an MC number, which  
13 suggests to me it came out of your files.

14 A. Okay.

15 Q. But I don't know if it's your document  
16 or not.

17 A. Okay.

18 Q. But your view is that this was not  
19 created by McCaffrey?

20 A. Oh, this is definitely a General Cigar  
21 piece, as far as I understand.

22 Q. And do you know who prepared it?

23 A. I don't.

24 Q. If you look at the first page where it  
25 talks about seven initial cigar shapes prior to

Pfaff

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version"?

A. That I understand.

Q. Was there a decision made, to your knowledge, by General Cigar to produce these cigars in the same size as the Cuban version?

A. I never heard of it.

Q. Were they produced in these sizes, to your knowledge?

A. Well, these are very common sizes. 7 by 49 is a classic size. It's a very desirable size. You will find brand after brand that makes a 7 by 49. Same with Lonsdale.

Q. Do you know why the writer wrote "same as Cuban version"?

A. I don't.

Q. If you turn to the second page, 199, MC 199.

(Witness complies.)

Q. It says in the second paragraph, "Its Cuban cigar heritage and the near cult status of the Cohiba Cuban version will be a benefit to generate initial trial of the brand and easy brand recognition, but not the main engine driving the brand."

1 Pfaff,

2 Do you agree with that statement?

3 A. Yeah, I think so.

4 Q. What Cuban cigar heritage did the  
5 General Cigar Cohiba have?

6 A. What was that question again?

7 Q. What Cuban cigar heritage did the  
8 General Cigar Cohiba have?

9 A. The first General cigar or the second  
10 General cigar?

11 Q. First or the second.

12 A. Well, I don't know what he means if I  
13 isolate this Cuban cigar heritage. I don't know  
14 to what he's referring there. "Its Cuban cigar  
15 heritage." I'm not positive which cigar he's  
16 talking about there.

17 I know what he's talking about when he  
18 says the near cult status of the Cohiba Cuban  
19 version.

20 Q. And when it says "will be a benefit to  
21 generate initial trial," by that, this cult  
22 status and this cigar, Cuban cigar heritage, your  
23 understanding is that it would help to get people  
24 to come in and at least try the brand; is that  
25 correct?

1 Pfaff

2 A. Yes, people who are already familiar  
3 with the name Cohiba.

4 Q. And then I guess the fourth paragraph  
5 or the fourth block, it says, "Packaging  
6 presentation will be minimal in keeping with  
7 clean, sparse look of Cuban Cohiba presentation."

8 Would you agree with that statement?

9 A. What's to agree with it?

10 Q. That the packaging presentation of the  
11 General Cigar Cohiba was minimal in keeping with  
12 the clean, sparse look of the Cuban Cohiba  
13 presentation.

14 A. It was minimal, yeah.

15 Q. And the idea here with General Cigar  
16 was to keep the look of the Cuban Cohiba; isn't  
17 that correct?

18 A. That's what I understand.

19 Q. Okay. On page 200, which I think is  
20 the next page, under "Competitive Position" it  
21 says, "The Cohiba brand name is powerful."

22 Is it your understanding that that's  
23 referring to the power of the Cuban Cohiba?

24 MS. DORE: If you know what the writer  
25 was referring to.



1 Pfaff

2 Q. That it wasn't full-flavored enough.

3 Do you know if something was done as a  
4 result to change the blend?

5 A. I don't know for sure.

6 Q. Did you hear that there was changes  
7 made to make it stronger?

8 A. I --

9 Q. More robust.

10 A. I know that people who smoked the  
11 cigar found it full-flavored when the cigar came  
12 out.

13 Q. By the time it came out, you had  
14 stopped smoking?

15 A. I had.

16 Q. And you did not, after all this work,  
17 did not taste the cigar?

18 A. Correct.

19 Q. Okay. I have marked this as  
20 Plaintiff's Exhibit 22. Now, it's dated April 7,  
21 1997, "Brand Cohiba Advertising Strategies," MC  
22 309.

23 Do you know who prepared this  
24 document?

25 A. This was prepared by the client. It's

1 Pfaff

2 their format. When I say prepared, I mean put  
3 together. Some of it is ours, some of it is the  
4 client's.

5 Q. In terms of what is in the document,  
6 do you know what is yours and what is the  
7 client's?

8 A. The absence of such things as Havana  
9 mystique and so forth, even to their Cuban  
10 namesakes, that would have been something that we  
11 would have said.

12 Q. What about -- there is another copy of  
13 this strategy or a slightly amended one that  
14 says -- I think it's April 17th. I can't say  
15 whether this matches it word for word, but the  
16 final approved one was, I believe, April 17th.

17 It's possible that I didn't pull it,  
18 but I'm just going to ask you to go briefly  
19 through them. These are the documents that I'm  
20 aware of other than the ones I showed you in  
21 April and in May. I may have given you my marked  
22 copies.

23 A. As I recall, it was handwritten on the  
24 front, it says, "Final 4-17-97." Yes, that's  
25 what I recollect, but the word "final" was

1 Pfaff

2 written on it. I don't have it here.

3 Q. In this Exhibit 22, the April 7th  
4 document, excuse me, the last part refers to  
5 reasons why. It says, "The distinctive  
6 combination of the smoothness and full, rich  
7 taste which are finally good enough to deliver  
8 the mystique of its legendary Cohiba name, as  
9 well as complete cigar pleasure that is singular  
10 and rare," is that -- would say that was the  
11 client or --

12 A. That's the client.

13 Q. The client is the one that's focusing  
14 on "the mystique of --

15 A. The mystique.

16 Q. -- its legendary Cohiba name"?

17 A. Yes, that's the client.

18 Q. And I took back from you -- I'm  
19 sorry. I need to mark that.

20 MR. GOLDSTEIN: Let me mark this one.

21 (Plaintiff's Exhibit 23, Memo dated  
22 4-8-87 from Farrington to Ratner, marked for  
23 identification, as of this date.)

24 BY MR. GOLDSTEIN:

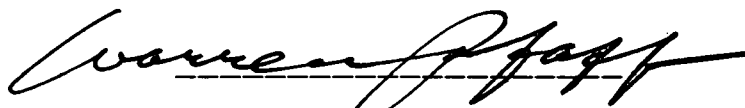
25 Q. This is a memo from Sam Ratner --

Pfaff

MS. DORE: Off the record.

(Discussion off the record.)

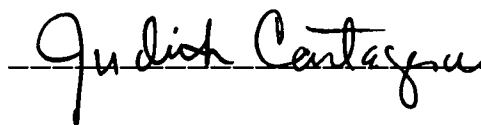
(Time noted: 4:20 p.m.)



WARREN PFAFF

Subscribed and sworn to before me

this 7<sup>th</sup> day of Sept., 2000.



JUDITH CARTAGENA  
NOTARY PUBLIC, State of New York  
No. 01CA6028638  
Qualified in Queens County  
Commission Expires August 2, 2001

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## C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, ANNETTE ARLEQUIN, a Shorthand  
Reporter and Notary Public within and for  
the State of New York, do hereby certify:

That WARREN PFAFF, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the testimony  
given by the witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 12th day of May, 2000.



ANNETTE ARLEQUIN, CSR, RPR

1

2

## ----- I N D E X -----

3

WITNESS

EXAMINATION BY

PAGE

4

WARREN PFAFF

MR. GOLDSTEIN

5

5

6

## ----- EXHIBITS -----

PLAINTIFF'S

FOR ID.

7

Plaintiff's Exhibit 1, Subpoena

7

8

Plaintiff's Exhibit 2, Morgan & Finnegan  
Cover letter dated 12-30-92 and trademark  
application

43

10

Plaintiff's Exhibit 3, Autumn 1992 Cigar  
Aficionado Premier Issue, Volume I, No. 1

48

11

Plaintiff's Exhibit 4, Cohiba logo

51

12

13

Plaintiff's Exhibit 5, Document  
entitled "Cohiba Media Presentation Year  
One, prepared by McCaffrey and Ratner, May  
1993"

76

15

Plaintiff's Exhibit 6, Document entitled  
"Marketing the Cohiba Cigar"

87

16

17

Plaintiff's Exhibit 7, Document entitled  
"Marketing the Cohiba Cigar"

99

18

Plaintiff's Exhibit 8, Memo dated 6-4-93  
from Donna to the Cohiba/General Cigar  
Team

116

20

Plaintiff's Exhibit 9, Document entitled  
"Marketing the Cohiba Cigar"

121

21

22

Plaintiff's Exhibit 10, Creative Strategy  
Development Statement dated 6-29-93

123

23

24

Plaintiff's Exhibit 11, McCaffery & Ratner  
Creative Strategy Development Statement  
dated 6-4-93

131

25

Plaintiff's Exhibit 12, Document entitled

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12  
13  
14  
15  
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----- EXHIBITS (Cont'd.) -----	
PLAINTIFF'S	FOR ID.
Plaintiff's Exhibit 13, Old General Cigar Cohiba label	139
Plaintiff's Exhibit 14, Request for Extension of Time and attachments	139
Plaintiff's Exhibit 15, Memo dated 2-23-97 from Geoghegan to Distribution	149
Plaintiff's Exhibit 16, Advertising Strategy dated 3-5-97	151
Plaintiff's Exhibit 17, October 1997 Cigar Aficionado	156
Plaintiff's Exhibit 18, Document entitled "Key Assumptions"	161
Plaintiff's Exhibit 19, Project Background	178
Plaintiff's Exhibit 20, Memo dated 3-12-97 from Lineberger to Rano and Geoghegan and attachment	184
Plaintiff's Exhibit 21, General Cigar Company, Inc. Product Development Proposal Project titled "Cohiba Brand Cigars"	193
Plaintiff's Exhibit 22, Brand Cohiba Advertising Strategies dated 4-7-97	202
Plaintiff's Exhibit 23, Memo dated 4-8-97 from Farrington to Ratner	206
Plaintiff's Exhibit 24, Document entitled "About Cohiba"	208

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ESQUIRE DEPOSITION SERVICES  
216 EAST 45TH STREET  
NEW YORK, NEW YORK 10017  
(212) 687-8010

NAME OF CASE: EMPRESA CUBANA VS. CULBRO CORPORATION

DATE OF CASE: APRIL 27, 2000

NAME OF WITNESS: WARREN PFAFF

PAGE      LINE      FROM      TO

5	11	Stanford	Stamford
5	16	In New York.	Yes.
9	7	No.	Yes.
9	11	Yes.	No.
20	15	Lambert. A	Lambert.
20	16	little bit on Olympus	The Italian
20	16	Microscopes perhaps.	Trade Commission.
23	15	employees, twelve	employees, up to twelve
25	21	forever	for ever
25	25	Garcia Vega	Garcia y Vega
29	10	Warren Pfaff, Inc.	Warren Pfaff Inc.
29	12	& Company	Company

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
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PAGE	LINE	FROM	TO
35	24	David	Sam
35	25	Gillies	Ratner
36	23	Miniaturas.	Miniaturas. Introduction
			of Cifuentes cigars.
37	8	lot work.	lot of work.
37	9	was ever	has ever
37	20	Garcia Vega	Garcia y Vega
37	21	Garcia Vega	Garcia y Vega
44	20	We also try -- the	The
47	17	I did	I do
60	15	certainly Chris said	certainly
61	8	available to,	available

\_\_\_\_\_  
WARREN PFAFF

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this \_\_\_\_ day of \_\_\_\_\_, 2000.

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(Notary Public)

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PAGE    LINE                      FROM                                      TO

63	12	this is	"This is
63	12	Macanudo.	Macanudo."
63	18	Alfonse	Alfons
63	20	Alfonse	Alfons
64	6	Alfonse	Alfons
72	11	Stratton	Straaton
72	15	Stratton	Straaton
72	18	think	have to think
73	13	and cop.	and copy.
74	3	sections	sessions
77	17	Steinhilber	Bob Steinhilber
80	20	Benjamin Mendez	Benjamín Menéndez

\_\_\_\_\_  
WARREN PFAFF

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this \_\_\_\_ day of \_\_\_\_\_, 2000.

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(Notary Public)

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PAGE	LINE	FROM	TO
81	5	Alfonse	Alfons
81	16	Menendez	Menéndez
81	19	Alfonse	Alfons
81	25	Menendez	Menéndez
81	25	Alfonse.	Alfons.
94	12	in	is
94	13	distributing	the
94	13	Cuba	Cuban
94	14	real,	the real Cuban Cohiba.
100	4	other page, other paper	other page
100	5	paper that	that

\_\_\_\_\_  
WARREN PFAFF

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this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

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PAGE	LINE	FROM	TO
101	13	Wofen	rattan
101	13	Wofen rattan	rattan
101	18	her doing	her concept
101	21	Yeah, um-hmm.	Yeah.
103	19	with any, with any	with any
106	15	would be being --	
107	8	Cuban named	Cuban-named
108	3	trying remake	trying to remake
108	23	Temple Hall.	Temple Hall Estates.
109	25	is a Gothic	is Gothic
110	9	C lower case	C and lower-case
110	11	it wants	wants
110	14	version myself.	version.

---

WARREN PFAFF

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this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

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PAGE	LINE	FROM	TO
115	11	of or what	or what
115	20	company	Company
116	2	advertising per se.	advertising.
118	4	debug	to debunk
119	7	cruise ship Caribbean	cruise-ship Caribbean
120	7	debreezy	breezy
120	8	anything to	anything like that to
120	20	who's	whose
124	5	have written it,	have
124	23	vertical	a vertical
125	24	Cuban	Cohiba
125	25	That	that

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

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PAGE    LINE                      FROM                      TO

126	2	Cuban Cohiba	Cohiba
128	19	No, that wouldn't --	Yes.
128	19	filler tobacco	at least half of it's
128	20	Dominican tobacco.	
128	20	It may or not be Cuban	from Cuban
129	16	not positive	positive
129	19	not sure	sure
130	22	a hard	hard
132	17	point, of	point. Of
132	19	say a,	say
132	23	three	\$3.00
134	16	per se. We	.We

\_\_\_\_\_  
WARREN PFAFF

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this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

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PAGE	LINE	FROM	TO
135	7	earlier; stayed	earlier. We
135	8	we were the ones who	we stayed
135	8	this red	the red
135	14	they	the client
135	14	We never	We've never
135	15	They turned	They've turned
136	3	Bill McCaffery	Bill and Sheila
136	4	and Sheila	McCaffery
138	21	This, which -- I do	I do
138	25	in the fly leaf	on the flyleaf
141	19	couldn't	wouldn't

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
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NAME OF WITNESS: WARREN PFAFF

PAGE	LINE	FROM	TO
142	15	as Cohiba	as for Cohiba
142	21	could	would
143	14	ago, did	ago who did
143	14	Ramon	Ramón
145	22	McNamara. It went on.	McNamara.
148	6	doing	doing it,
148	8	red dot and	red dot
150	14	an internal	internal
152	11	I wrote	I believe I wrote
156	23	three variety of Cuban cigars	three varieties of Cuban seed
156	23	I'd totally	I'd
156	24	forgot that	forgotten that copy.

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

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PAGE    LINE                      FROM                                      TO

161	19	but I don't know what	but I know we
161	20	spending.	spending much less than that.
166	3	Well, on the Hanson,	Hanson,
169	22	this kind of stuff.	strategy.
170	3	half maybe,	half, maybe
171	14	It was, just	It just
171	15	it, to	it.
171	16	us.	
174	11	whatever overseas about it or whatsoever.	whatever overseas.
175	3	and so	because
175	6	I think so.	(Influential?) I think so.
175	21	this	the

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
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**NAME OF WITNESS: WARREN PFAFF**  
**PAGE      LINE                      FROM                                      TO**

176	6	these	those
176	19	sweeping.	sweeping the country.
176	23	Shankin	Shanken
177	2	cigar smokes	Big Smokes
178	7	They have	
178	8	like short headlines.	
180	19	offhand,	offhand is,
180	22	before this, "a	before. The line was "A
180	23	stratas,"	cigars,"
180	23	it, "a	it with "A
181	3	position	position such as
181	4	they	"they

**WARREN PFAFF**

**Subscribed and sworn to before me.**

**this      day of      , 2000.**

**(Notary Public)**

**My Commission Expires:**

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PAGE    LINE                      FROM                      TO

181	5	mystique.	mystique,"
181	11	Havana and mystique.	"Havana mystique."
181	21	Cohiba	"Cohiba
181	22	island	island"
185	4	Cullman	Coleman
185	5	Cullman	Coleman
186	6	Cullman	Coleman
187	11	Cullman	Coleman
187	22	Hinkel	Hinkle
187	25	Hinkel Cullman	Hinkle Coleman
191	15	No,	But no,
195	24	same	"Same

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
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PAGE LINE FROM TO

197	18	the near	"the near-
197	19	version	version"
198	9	with it?	with?
199	22	in	from
201	18	unique buying	"unique buying"
205	8	Havana	"Havana
205	9	mystique	mystique"
205	9	forth,	forth, that's us.
205	9	even to	"Even to
205	9	namesakes,	namesake."
208	25	by a	by
209	2	Fred	Alfred



WARREN PFAFF

Subscribed and sworn to before me.

this 7<sup>th</sup> day of Sept., 2000.

  
(Notary Public)

August 2, 2001  
My Commission Expires:

JUDITH CARTAGENA  
NOTARY PUBLIC, State of New York  
No. 01CA6028638  
Qualified in Queens County  
Commission Expires August 2, 2001

A					
<b>ability</b> 16:17		129:19	60:18 61:20 62:23	65:25 127:2 153:5	186:25
<b>able</b> 21:6 56:24,25		<b>across</b> 68:23	68:16 156:10,16	198:2 201:21	<b>approached</b> 65:9
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<b>about</b> 8:2,13,22		<b>actual</b> 19:6	175:24 176:24	124:22 153:18	<b>approaches</b> 73:16
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29:15 31:7,10,13		146:21 186:23	<b>African</b> 126:17	<b>amended</b> 205:13	<b>approve</b> 73:22 83:15
33:25 37:5,16 39:10		<b>ad</b> 26:4 37:21,21,23	129:23	<b>American</b> 33:11	<b>approved</b> 83:2,4,13
39:22 43:21 44:8		68:20 70:19 74:11	<b>after</b> 16:19,21 38:17	90:15 125:16	83:17,25,25 144:5
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309  
For the mark COHIBA  
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273  
For the mark COHIBA  
Date registered: June 6, 1995

-----	X	
EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
-----	X	

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition Transcript of Warren Pfaff,  
designated under Fed. R. Civ. P. 30(b)(6), dated June 29, 2000**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

ORIGINAL

215

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff,

vs.

97 Civ. 8399 (RWS)

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

-----X

VOLUME II

Continued Rule 30(B)(6) DEPOSITION

OF WARREN PFAFF

New York, New York

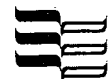
Thursday, June 29, 2000

Reported by:

ANNETTE ARLEQUIN

CSR NO. 1450

JOB NO. 109657



ESQUIRE<sup>TM</sup>  
DEPOSITION SERVICES

216 East 45th Street, 8th Floor  
New York, NY 10017-3304  
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Fax 212.557.5972



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June 29, 2000

10:30 a.m.

Continued Rule 30(B)(6) deposition of  
WARREN PFAFF, held at the offices of  
RABINOWITZ, BOUDIN, STANDARD, KRINSKY &  
LIEBERMAN, P.C., 740 Broadway at Astoria  
Place, 5th Floor, New York, New York,  
pursuant to Subpoena, before ANNETTE  
ARLEQUIN, a Certified Shorthand Reporter and  
a Notary Public of the State of New York.

1

2 A P P E A R A N C E S:

3

4 RABINOWITZ, BOUDIN, STANDARD, KRINSKY &  
5 LIEBERMAN, P.C. ;

6 Attorneys for Plaintiff

7 740 Broadway at Astoria Place, 5th Floor

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10

11

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13 Attorneys for Defendants

14 345 Park Avenue

15 New York, New York 10154-0053

16 BY: DICKERSON M. DOWNING, ESQ.

17

18

19

20 A L S O P R E S E N T:

21

22 MORGAN &amp; FINNEGAN, LLP

23 KRISTOPHER DAWES, Summer Associate

24

25

1  
2 W A R R E N P F A F F, called as a witness,  
3 having been previously sworn by a Notary  
4 Public, was examined and testified as  
5 follows:

6 CONTINUED EXAMINATION

7 BY MR. GOLDSTEIN:

8 MR. GOLDSTEIN: Just prior to the  
9 deposition, Mr. Downing, counsel for General  
10 Cigar, and I had a brief conversation.

11 I just wanted to put on the record  
12 that at the first 30(b)(6) deposition of  
13 McCaffery, Ratner of Mr. Warren Pfaff, I had  
14 shown him a full color catalog by Alfred  
15 Dunhill, particularly a one-page promotion  
16 of General Cigar's Cohiba cigar, and we had  
17 not marked that as an exhibit.

18 I just want to put on the record that  
19 the catalog is the same as the catalog  
20 produced to both parties by Alfred Dunhill.  
21 Alfred Dunhill produced a black and white  
22 version of the catalog and I just wanted to  
23 put the Bates numbers into the record. AFD  
24 01783 through AFD 01822, and the Cohiba  
25 promotion appears on page AFD 01800.

1 Pfaff

2 Just for the record, we'll still have  
3 the full color catalog in our physical  
4 possession and we're not marking it as an  
5 exhibit at this time.

6 BY MR. GOLDSTEIN:

7 Q. Mr. Pfaff, did you review the  
8 deposition transcript from your -- the first  
9 deposition we had together?

10 A. Yes.

11 Q. And has anybody else other than  
12 counsel reviewed that deposition, to your  
13 knowledge?

14 A. I don't know.

15 Q. Have you had any discussions with  
16 anybody at McCaffery, Ratner since your  
17 deposition about the topics that we discussed at  
18 your deposition?

19 A. Yes.

20 Q. Okay. And who did you have  
21 discussions with?

22 A. Bill McCaffery.

23 Q. Anyone else?

24 A. No.

25 Q. And what was the nature of those

1 Pfaff

2 Q. Did you have any conversations with  
3 anyone at General Cigar following your deposition  
4 regarding the deposition issues, topics?

5 A. Yes.

6 Q. And who was that with?

7 A. Ross Wollen.

8 Q. And what did you ask Mr. Wollen?

9 MR. DOWNING: Objection to the form.

10 A. I didn't ask him anything.

11 Q. Did he ask you anything?

12 A. He didn't ask me anything, he just  
13 commented on the deposition.

14 Q. Okay. What did he say?

15 A. He thought it went well.

16 Q. Okay. So you didn't speak with him in  
17 terms of gathering further information?

18 A. No.

19 Q. Okay. Did you speak with anybody at  
20 General Cigar?

21 A. No.

22 Q. Did you review any documents  
23 subsequent to the deposition?

24 A. No.

25 Q. Did you make any other attempt to

1 Pfaff

2 learn the answers to any of the questions I asked  
3 in which you either didn't know the answer or  
4 didn't recall the answer?

5 A. I did.

6 Q. And what was that?

7 A. I asked Bill McCaffery what the  
8 genesis of the red and the red dot were. I  
9 wanted to confirm what I had stated in the  
10 deposition.

11 He confirmed for me that he had  
12 volunteered the red dot after it had been agreed  
13 very strongly by a client and Bill McCaffery that  
14 red should be the color and nothing should be  
15 yellow or gold, whatever.

16 Q. And was it Bill McCaffery told you  
17 that he was the one who proposed the idea of the  
18 red dot on the O of Cohiba?

19 A. Yes.

20 Q. Is that consistent with your  
21 recollection?

22 A. Yes.

23 Q. And do you recall when Mr. McCaffery  
24 made that proposal?

25 A. In that meeting.

1 Pfaff

2 Q. In the trade dress meeting.

3 A. Right.

4 Q. Okay. Does that meeting, talking now  
5 about the red dot, refresh you in any way that  
6 that meeting would have taken place in 1997?

7 A. I can't speculate.

8 Q. Do you recall it being four years  
9 before the launch or close to the time of the  
10 launch?

11 MR. DOWNING: Object to the form.

12 A. I don't know.

13 Q. Did Mr. McCaffery tell you anything  
14 else about the trade dress meeting?

15 A. No.

16 Q. Did you ask him anything else --

17 A. No.

18 Q. -- at the trade dress meeting?

19 Upon your review of the deposition, do  
20 you believe that any of the statements you made  
21 were factually inaccurate?

22 A. No.

23 Q. Did you review any bills or other  
24 financial documents regarding when McCaffery,  
25 Ratner worked on Cohiba?

1 Pfaff

2 answers.

3 A. No.

4 Q. All you would really be able to do now  
5 is relook at them to see if your memory is  
6 refreshed?

7 A. Yes.

8 Q. Okay. I don't want to ask you to do  
9 that.

10 Let me just ask you to turn to No. 8,  
11 though, and ask you --

12 A. Eight?

13 Q. Yes.

14 Ask you if you recall who Donna is.

15 A. (Witness nodding.)

16 Q. And the answer is you do not know?

17 A. No idea.

18 Q. If you would turn back to No. 5 and  
19 look at page --

20 A. Yes.

21 Q. -- 498.

22 A. Uh-huh.

23 Q. The little numbers on the bottom, MC  
24 498.

25 A. 0495?



1 Pfaff

2 Q. Yeah. 0439 to 0498.

3 A. 0498.

4 Q. What is SMRB?

5 A. Hum.

6 Q. What does it stand for, if you know?

7 A. It's not hitting me. I don't know.

8 Q. Have you heard the initials, term,  
9 before, you're just not recalling what it stands  
10 for, or you don't recognize the initials?

11 A. I don't recognize the initials.

12 Q. If you look at the, where it says  
13 "Demographic target audience rationale" and then  
14 it provides some factors; age, education, income,  
15 was this General Cigar's demographic target  
16 audience for its Cohiba?

17 A. Yes.

18 Q. And this was true both in 1993 and in  
19 1997?

20 MR. DOWNING: Objection.

21 A. I believe so.

22 Q. Were you familiar with market research  
23 done by General Cigar in the period from 1993 to  
24 1997?

25 A. Well, I would have to see the

1 Pfaff

2 presentation?

3 A. No.

4 Q. Do you recall why you wrote "Final" on  
5 the one you wrote "Final" on?

6 A. Why?

7 Q. Yes.

8 A. Because there had been so many  
9 versions.

10 Q. What made it the final? Did you  
11 decide that or did someone at General Cigar  
12 decide that?

13 A. It had been okayed.

14 Q. Okayed by?

15 A. The client.

16 Q. By General Cigar you mean?

17 A. Yes.

18 Q. And do you know who at General Cigar  
19 okayed it?

20 A. John Rano, John Geoghegan.

21 Q. Now, in front of us marked as Exhibit  
22 97 is another document, "Advertising Strategy,  
23 Final 4-17-97."

24 You don't know who marked that  
25 document "Final," Exhibit 97?

1 Pfaff

2 this document when, the last time; prior to your  
3 first deposition with me?

4 A. Well, I have no idea when the last  
5 time was.

6 Q. Is there anything in this document  
7 that you recall not being approved by General  
8 Cigar, Exhibit 97?

9 A. I don't really understand that  
10 question.

11 Q. Is there anything in the content of  
12 Exhibit 97 that's marked "Final," or Exhibit 22  
13 where the text is the same, that you recall the  
14 client, General Cigar, disapproving of?

15 A. No.

16 Q. I'd like to show you a document that  
17 was previously marked as Plaintiff's Exhibit 32.  
18 It's not -- it won't be from his set.

19 It's three versions of the April 7,  
20 1997 document. In other words, the printed text  
21 is the same, but each one, the second and third  
22 pages have handwriting.

23 A. Well, it's hard to read.

24 Q. The third page is the same as Exhibit  
25 97, the same page?

1 Pfaff

2 "QUESTION: Do you know who it would  
3 have been prepared by?

4 "ANSWER: Oh, I'm quite certain this  
5 was John Geoghegan."

6 Do you recall that?

7 A. I would agree with that.

8 Q. Okay. If you would then look at  
9 what's later marked after your deposition as  
10 Plaintiff's Exhibit 34.

11 A. This one?

12 Q. And ask you -- it also says  
13 "Advertising Strategy" but it's in a slightly  
14 different format, and it has the date March 5,  
15 1997, updated 5-17-97.

16 And I ask you if you know who prepared  
17 that document.

18 A. Yes. This is a client document.

19 Q. Are you aware if you made available to  
20 your counsel, advertising strategy documents in  
21 the form that we've been looking at that you  
22 yourself prepared?

23 A. I certainly think so, yes.

24 MR. GOLDSTEIN: I'll state on the  
25 record that I am not aware of others than

1 Pfaff

2 meeting regarding the use of red?

3 A. Yes.

4 Q. Okay. I think we were talking about  
5 the red dot in the O in Cohiba?

6 A. Yes.

7 Q. Do you recall when you first had  
8 discussions with General Cigar about the use of  
9 the color red?

10 A. Well, it was in that meeting.

11 Q. That was the first time you recall  
12 discussing it?

13 A. I wasn't in that meeting.

14 Q. Oh, you were not at the meeting.

15 A. I was not at that meeting.

16 Q. Have you yourself had any discussions  
17 with General Cigar regarding use of the red dot?

18 A. No.

19 Q. Do you have any knowledge of General  
20 Cigar's decision to use the red dot other than  
21 what Bill McCaffery told you?

22 MR. DOWNING: Objection to the form.

23 A. Yes, Ross Wollen and Bill McCaffery.

24 Q. What did Ross Wollen tell you?

25 A. That he was -- well, when they brought

1 Pfaff

2 up the red at the meeting, whoever brought it up,  
3 it was immediately embraced and then Bill came up  
4 with the idea of this red in the O. And I  
5 think -- and somebody on the client side came up  
6 with it at the same time. I mean they both said  
7 put it in the circle.

8 Q. This is something Mr. Wollen told you?

9 A. No. This is something Bill told me.

10 MR. DOWNING: Objection.

11 A. Bill McCaffery told me.

12 Q. I thought you said you also had a  
13 conversation with Ross Wollen.

14 A. Yes.

15 Q. Okay. And what did Ross Wollen tell  
16 you?

17 A. That both sides of the table agreed on  
18 this, in going red, and that in addition, buying  
19 the idea of putting the red in the O.

20 Q. Did Mr. Wollen tell you this at that  
21 time or did he tell you this more recently?

22 MR. DOWNING: Objection.

23 A. Oh, I can't recall if it was told to  
24 me at that time or later.

25 Q. And --

1 Pfaff

2 Q. Do you have any knowledge as to why  
3 there was a decision not to use Cohiba yellow or  
4 Cohiba gold?

5 A. Oh, that had to do with the basic  
6 strategy of being Dominican and not being like  
7 the Cuban product.

8 Q. I'm going to show you what was marked  
9 as Plaintiff's 31. This was marked after your  
10 deposition. This is a document, the first page  
11 is a fax from Amy to Christina at McCaffery,  
12 Ratner.

13 Do you know who Christina is?

14 A. Christina Keaveney.

15 Q. She used to work for McCaffery?

16 A. Yes.

17 Q. And Amy is Amy Lineberger?

18 A. Yes.

19 Q. And she worked for General Cigar?

20 A. Yes.

21 Q. And on the second page FYI, there are  
22 several initials?

23 A. Yes.

24 Q. Are you WP?

25 A. Yes.

1 Pfaff

2 the fact compilation of information? In other  
3 words, the survey itself?

4 A. Yes, from time to time we do.

5 MR. DOWNING: Meaning the  
6 questionnaire?

7 THE WITNESS: The questionnaire.

8 MR. GOLDSTEIN: The survey, the  
9 questionnaire.

10 BY MR. GOLDSTEIN:

11 Q. Do you know if this document is in the  
12 McCaffery, Ratner files?

13 A. I don't know.

14 Q. I'm not going to ask any other  
15 questions about it.

16 MR. GOLDSTEIN: Off the record.

17 (Discussion off the record.)

18 MR. GOLDSTEIN: Can we mark this  
19 document.

20 (Plaintiff's Exhibit 100, Work Order  
21 dated 6-5-97 by Christina Keaveney, marked  
22 for identification, as of this date.)

23 BY MR. GOLDSTEIN:

24 Q. I'm showing you a document that's been  
25 marked as Plaintiff's 100 dated June 5, 1997. It



1 Pfaff

2 says, "Initiated by Christina Keaveney."

3 That's the same person I just referred  
4 to?

5 A. Yes.

6 Q. McCaffery, Ratner former employee?

7 The first page says, "Special  
8 Instructions: Create a Cohiba brand image poster  
9 that incorporates the mystique of Cuba. Poster  
10 may be used as an insert in Cigar Aficionado at a  
11 later date."

12 Do you recall reviewing this document?

13 A. No.

14 Q. Do you know, who did Christina  
15 Keaveney work for at McCaffery?

16 A. She worked for Sam Ratner.

17 Q. He's one of the partners at  
18 McCaffery?

19 A. Yes.

20 Q. And was she also, to your knowledge,  
21 communicating with the client on this project?

22 MR. DOWNING: Objection.

23 A. Yes.

24 Q. Do you know who instructed her to  
25 create this poster?

1 Pfaff

2 Q. Look at what I just marked as  
3 Plaintiff's 101, "General Cigar 1997-1998 Media  
4 Plan Cohiba." It says, "Prepared by McCaffery,  
5 Ratner, Gottlieb & Lane," date, June 26, 1997.

6 Have you seen this document before?

7 A. I don't recall it specifically, but I  
8 would have seen something like this certainly.

9 Q. Do you know if this document went to  
10 General Cigar?

11 A. Well, it was prepared for General  
12 Cigar.

13 Q. I guess it was inartfully phrased.

14 Does this look like the version that  
15 would have gone to General Cigar as opposed to a  
16 draft?

17 A. Yes.

18 Q. And do you know who prepared it?

19 A. This would have been prepared by Bob  
20 Steinhilber. He's the media director.

21 Q. Right.

22 Do you recall any discussions with  
23 General Cigar to the effect that, "The cigar  
24 market is hot right now, let's take advantage  
25 with a big splash for the Cohiba"?

1 Pfaff

2 Q. Let me show you what was previously  
3 marked as Plaintiff's Exhibit 41. It's a  
4 two-page document, MC 593, MC 594. "Copy for  
5 approval 9-16-97" and the heading is "The Cohiba  
6 comes of age. Mike's Cigars exclusive  
7 southeastern supplier in October."

8 Do you recall seeing this document?

9 A. No.

10 Q. Do you have any knowledge of whether  
11 McCaffery, Ratner was asked to review Mike's  
12 Cigars' press release or information Mike's  
13 Cigars was going to put out on the Cohiba?

14 A. This particular?

15 Q. In general. I mean you just told me  
16 don't remember seeing that document.

17 A. Yeah, I don't recall seeing this.

18 Q. Do you have any knowledge of McCaffery  
19 being asked to review text or a press release  
20 coming out of Mike's Cigars?

21 A. For the General Cigar Cohiba?

22 Q. Yes.

23 A. I think we -- yeah, I think we may  
24 have helped him there. Yeah, I think we did.

25 Q. Do you know if you helped prepare this

1 Pfaff

2 document?

3 A. I could have. Let me see.

4 (Witness reviewing document.)

5 A. This seems to have been done by  
6 somebody at Susan Brussman & Associates. I  
7 recall helping with it.

8 Q. Uh-huh.

9 A. That's all I recollect.

10 Q. Do you recall any discussion about the  
11 line "Fidel Castro's favorite cigar, the illusive  
12 and obscure Cohiba, will finally be available in  
13 the U.S. on Wednesday, October 1st, 1997?

14 A. No, I don't recall that.

15 Q. You don't recall any discussions?

16 A. It's not my line.

17 Q. Do you know who's line it is?

18 A. I have no idea.

19 Q. Do you recall any discussions about  
20 that line?

21 A. No.

22 Q. Do you recall discussing it with  
23 anyone at General Cigar?

24 A. No. I don't recall seeing this  
25 finished version.

1 Pfaff

2 close to being done, believe it or not

3 (Plaintiff's Exhibit 107, Text of

4 3-3-98 radio ad, marked for identification,

5 as of this date.)

6 BY MR. GOLDSTEIN:

7 Q. I'm going to show you what's been

8 marked as Plaintiff's 107. It has a -- February

9 3rd, 1998 is the date at the top. It says

10 "General Cigar Company, Cohiba, 50 Seconds

11 Recorded Radio, for use with 10-Second Live Tag,

12 Amigo, 40-340," MC 1095 and 1096.

13 I'd ask you if you've seen this

14 before.

15 A. I have.

16 Q. Did you prepare the text?

17 A. I did.

18 Q. Do you know if this ran?

19 A. No, it did not.

20 Q. It did not run?

21 A. Never produced.

22 Q. Do you know why not?

23 A. Lack of money.

24 Q. Do you know if it was approved for in

25 terms of the content, whether it was approved for

1 Pfaff

2 release?

3 A. No.

4 Q. You don't know or it was not?

5 A. No, I don't know.

6 Q. Do you know if it was reviewed by

7 General Cigar?

8 A. I don't know.

9 Q. Since you wrote it, let me just ask  
10 you a couple questions about it.

11 As you go down, you start talking  
12 about a cigar.

13 Second man says, "What is it"?

14 First man says, "Cohiba."

15 And there's a woman's vocal, "Cohiba,  
16 come haunt me."

17 Second man, "Cohiba? You're  
18 kidding."

19 First man, "Not kidding."

20 What was the kidding reference?

21 A. Well, because the second guy thinks  
22 he's getting a Cuban cigar.

23 Q. So he's saying "Not kidding," you have  
24 the Cuban Cohiba?

25 A. Right.

1 Pfaff

2 Q. Because it's difficult to get?

3 A. Illegal.

4 Q. Illegal and sought after?

5 MR. DOWNING: Objection.

6 A. No. So this guy straightens him out  
7 and says Dominican Republic. It's not the Cuban  
8 cigar, it's the Dominican cigar.

9 Q. And then you make references to the  
10 Piloto Cubano blend.

11 Is that one of the three supposed  
12 Cuban seed fillers?

13 A. Correct.

14 Q. But not the other two, it's just  
15 referring to one?

16 A. No. It's the three Cuban seed blend  
17 it's called.

18 Q. It's called Piloto?

19 A. Yes.

20 Q. That's the three together or that's  
21 one of the three?

22 A. Piloto Cubano is just a generic name.  
23 Our blend has three Cuban seeds in it, but there  
24 are lots of Piloto Cubano blends and there are  
25 Cuban seed blends.

1 Pfaff

2 Q. And why would the second man be asking  
3 if the cigar is from Cuba? What was the point?

4 A. To say that it isn't, that was the  
5 point. It allowed me to get across the idea that  
6 yes, there is a Cuban Cohiba, but this one isn't  
7 it, it's Dominican. That was the point.

8 Q. Because most people would think of the  
9 Cohiba as a Cuban cigar.

10 MR. DOWNING: Objection.

11 BY MR. DOWNING:

12 Q. Is that correct? That was your  
13 thinking, right?

14 MR. DOWNING: Objection.

15 A. Well, if --

16 Q. Wait.

17 A. Prior to our announcing this, if a  
18 cigar smoker had any knowledge of a cigar called  
19 Cohiba, it was more likely to be that of the  
20 Cuban Cohiba.

21 MR. GOLDSTEIN: Let me just mark  
22 this.

23 (Plaintiff's Exhibit 108, Text of  
24 4-7-98 radio ad, marked for identification,  
25 as of this date.)



1 Pfaff

2 BY MR. GOLDSTEIN:

3 Q. I'm showing you what's dated April 7,  
4 1998 from "General Cigar Company, Cohiba Cigars,  
5 60-Second Live Radio, Cohiba," MC 1092, and it's  
6 the text of, I presume, a radio ad; is that  
7 correct?

8 A. Yes.

9 Q. And did you prepare that?

10 A. I did.

11 Q. And did that run?

12 A. Not to my knowledge.

13 Q. If you look at the reference to the  
14 type of tobacco, it says, "With a new blend of  
15 three varieties of Dominican tobacco that took  
16 six years to develop."

17 Did you have any discussion about  
18 changing from three varieties of Cuban seed to  
19 three varieties of Dominican with anyone at  
20 General Cigar?

21 MR. DOWNING: Wait a second. Three  
22 varieties of Cuban seed to three varieties  
23 of Dominican tobacco?

24 MR. GOLDSTEIN: Yeah, of tobacco.

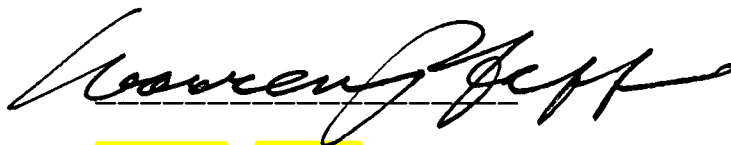
25 A. I don't recall the conversation.

1 Pfaff

2 MR. GOLDSTEIN: I have no idea if  
3 they're his documents or not, and Ms. Dore  
4 has neither refused to produce them nor  
5 produced them. She's just looking for  
6 them.

7 I would hope not to recall either this  
8 witness or anyone from McCaffery, but I'm  
9 not waiving my rights to do so.

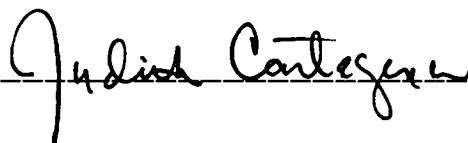
10 (Time noted: 2:00 p.m.)

11  
12 

13 WARREN PFAFF

14  
15 Subscribed and sworn to before me

16 this 7<sup>th</sup> day of Sept. \_\_\_\_\_, 2000.

17  
18 

JUDITH CARTAGENA  
NOTARY PUBLIC, State of New York  
No. 01CA6028638  
Qualified in Queens County  
Commission Expires August 2, 2001

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## C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

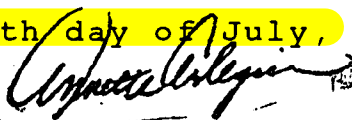
COUNTY OF NEW YORK )

I, ANNETTE ARLEQUIN, a Certified  
Shorthand Reporter and Notary Public within  
and for the State of New York, do hereby  
certify:

That WARREN PFAFF, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the testimony  
given by the witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 17th day of July, 2000.



ANNETTE ARLEQUIN, CSR, RPR

1

## 2 ----- I N D E X -----

3 WITNESS EXAMINATION BY PAGE

4 WARREN PFAFF MR. GOLDSTEIN 218

MR. DOWNING 354

5

6

## 7 ----- DOCUMENT REQUEST -----

8

PAGE 325 UnXeroxed 1997 flier leaf

9

10

## ----- EXHIBITS -----

10 PLAINTIFF'S FOR ID.

11 Plaintiff's Exhibit 95, Fax with fax  
12 date of 4-19-93 from General Cigar to  
McCaffery, Ratner 26313 Plaintiff's Exhibit 96, Displays and  
14 text regarding Cuban Cohiba 27015 Plaintiff's Exhibit 97, Document entitled  
"Advertising Strategy" dated 4-17-97 27516 Plaintiff's Exhibit 98, Document  
17 entitled "Advertising Strategy" dated  
4-17-97 28618 Plaintiff's Exhibit 99, Cohiba ad copy  
19 Version A and Version B 29020 Plaintiff's Exhibit 100, Work Order dated  
6-5-97 by Christina Keaveney 30421 Plaintiff's Exhibit 101, "General Cigar  
22 1997-1998 Media Plan Cohiba" prepared by  
McCaffery, Ratner, Gottlieb & Lane dated  
6-16-97 31123 Plaintiff's Exhibit 102, One-page document  
24 on McCaffery, Ratner letterhead dated  
8-13-97 "Cohiba Cigars flier leaf for Cigar  
25 Boxes" 318

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----- EXHIBITS (Cont'd.) -----  
PLAINTIFF'S FOR ID.  
  
Plaintiff's Exhibit 103, Copy of flier leaf  
copyright 1998 Diaz y Cia 322  
  
Plaintiff's Exhibit 104, Copy of flier leaf  
copyright 1997 Diaz y Cia 323  
  
Plaintiff's Exhibit 105, Press release  
dated 9-11 332  
  
Plaintiff's Exhibit 106, Cohiba General  
Plan 338  
  
Plaintiff's Exhibit 107, Text of 3-3-98  
radio ad 346  
  
Plaintiff's Exhibit 108, Text of 4-7-98  
radio ad 349

ERRATA SHEET  
ESQUIRE DEPOSITION SERVICES  
216 EAST 45TH STREET  
NEW YORK, NEW YORK 10017  
(212) 687 - 8010

NAME OF CASE: CUBATOBACO VS. CULBRO

DATE OF CASE: JUNE 29, 2000

NAME OF WITNESS: WARREN PFAFF

PAGE	LINE	FROM	TO
222	13	a client	the client
222	19	Yes.	Yes, he and Ira Levy.
226	18	of those	of all those
226	19	topics	topics as a group.
232	11	be telephone,	be by telephone, or
232	19	Hinkel	Hinkle
236	14	two, two-and-a-half years	two years
239	18	matched	match
240	25	comprehensive	
242	16	Macchiarullo	Macchiarulo
243	2	M-a-c-c-h-i-a-r-u-l-l-o	M-a-c-c-h-i-a-r-u-l-o
245	24	Daniel Nunez,	Benjamín Menéndez,

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
My Commission Expires:

ERRATA SHEET  
ESQUIRE DEPOSITION SERVICES  
216 EAST 45TH STREET  
NEW YORK, NEW YORK 10017  
(212) 687 - 8010

NAME OF CASE: CUBATOBACO VS. CULBRO  
DATE OF CASE: JUNE 29, 2000  
NAME OF WITNESS: WARREN PFAFF

PAGE	LINE	FROM	TO
250	22	similar to	similar in attitude to
251	11	in the --	in the visuals. The
260	9	We may have -- at	At
273	23	come by, but yes.	come by.
274	4	Habanos	Information on Habanos
293	5	Ramon	Ramón
293	22	Ramon	Ramón
295	3	Ramone	Ramón
295	8	cigar	Partagas cigar
297	5	side came up	side -- Ira Levy -- came up
298	9	togetherness, here's	togetherness on

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
My Commission Expires:

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NAME OF CASE: CUBATOBACO VS. CULBRO

DATE OF CASE: JUNE 29, 2000

NAME OF WITNESS: WARREN PFAFF

PAGE	LINE	FROM	TO
298	10	we're	we were
307	19	Yes.	Yes, but not with a Cuban mystique.
309	10	know.	know of any.
310	9	She's just	She was only
313	9	that undoubtedly	undoubtedly
315	18	we're	we were
317	15	I do,	I do
321	3	while it did not wind up	which is
321	4	ingredients, the cigar.	ingredients of the cigar.
321	6	what do	what have
321	6	What do	What have
322	9	done. It can be done.	done, but not as informatively.

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
My Commission Expires:



ERRATA SHEET  
ESQUIRE DEPOSITION SERVICES  
216 EAST 45TH STREET  
NEW YORK, NEW YORK 10017  
(212) 687 - 8010

NAME OF CASE: CUBATOBACO VS. CULBRO

DATE OF CASE: JUNE 29, 2000

NAME OF WITNESS: WARREN PFAFF

PAGE	LINE	FROM	TO
342	14	Probably maybe '98 or something.	Probably '98.
344	8	In the plan there are--this	This
346	23	money.	money, probably.
348	16	seed blend	seed tobaccos blended
348	17	it's called	together
348	19	Yes.	Yes, Piloto Cubano.
348	23	Our blend	General Cigar's blend
348	24	there are	there are lots of other
351	8	recall.	recall the circumstances.
351	13	know	recall
351	19	a store	stores

\_\_\_\_\_  
WARREN PFAFF

Subscribed and sworn to before me.

this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
My Commission Expires:

ERRATA SHEET  
ESQUIRE DEPOSITION SERVICES  
216 EAST 45TH STREET  
NEW YORK, NEW YORK 10017  
(212) 687 - 8010

NAME OF CASE: CUBATOBACO VS. CULBRO  
DATE OF CASE: JUNE 29, 2000  
NAME OF WITNESS: WARREN PFAFF

PAGE	LINE	FROM	TO
351	20	in-stores	stores
351	20	asked	ask
352	3	paid	would pay
352	12	about.	against.
352	19	order comes out about	order about
353	17	crossed	crossed up
353	23	and but	but



WARREN PFAFF

Subscribed and sworn to before me.

this 7<sup>th</sup> day of Sept., 2000.

  
(Notary Public)

August 2, 2001  
My Commission Expires:

JUDITH CARTAGENA  
NOTARY PUBLIC, State of New York  
No. 01CA6028638  
Qualified in Queens County  
Commission Expires August 2, 2001



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256:7,8 348:24,25  
**block** 301:6,7  
**blocked** 324:24  
**blood** 359:19  
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**boiled** 257:20  
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306:20 311:4 312:3  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

-----	X	
EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
-----	X	

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition Transcript of Allan S. Pilon,  
designated under Fed. R. Civ. P. 30(b)(6) and 45, dated July 23, 2001**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVue Nos. 138, 136, 135, 132, 91 and 89.



C O N F I D E N T I A L

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
EMPRESA CUBANA DEL TABACO, d.b.a.  
CUBATABACO,

Plaintiff,

vs.

CULBRO CORPORATION and GENERAL  
CIGAR CO., INC.,

Defendants.  
-----X

CONFIDENTIAL

97 Civ. 8399 (RWS)

**COPY**

CONFIDENTIAL

DEPOSITION OF ALLAN S. PILSON

New York, New York

Monday, July 23, 2001

Reported by:  
ANNETTE ARLEQUIN  
CSR NO. 1450  
JOB NO. 124010

  
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C O N F I D E N T I A L

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
EMPRESA CUBANA DEL TABACO, d.b.a.  
CUBATABACO,

Plaintiff,

vs.

CULBRO CORPORATION and GENERAL  
CIGAR CO., INC.,

Defendants.  
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DIS C.48A

1

2

July 23, 2001

3

10:00 a.m.

4

5

Confidential Rule 30(B)(6) and 45 deposition

6

of ALLAN S. PILSON, held at the offices of

7

Ladas &amp; Parry, 26 West 61st Street, New

8

York, New York, pursuant to Agreement,

9

before Annette Arlequin, a Certified

10

Shorthand Reporter and a Notary Public of

11

the State of New York.

12

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1 A P P E A R A N C E S:

2

3

4 RABINOWITZ, BOUDIN, STANDARD, KRINSKY &

5 LIEBERMAN, P.C.

6 Attorneys for Plaintiff

7 740 Broadway, 5th Floor

8 New York, New York 10003-9518

9 BY: MICHAEL KRINSKY, ESQ.

10

11

12 MORGAN & FINNEGAN, LLP

13 Attorneys for Defendants

14 345 Park Avenue

15 New York, New York 10154-0053

16 BY: DICKERSON M. DOWNING, ESQ.

17

18

19 A L S O P R E S E N T:

20

21 RYAN SMITH, Summer Associate, Morgan & Finnegan

22

23

24

25

1 IT IS HEREBY STIPULATED AND AGREED,  
2 by and between the attorneys for the  
3 respective parties herein, that filing and  
4 sealing be and the same are hereby waived.

5 IT IS FURTHER STIPULATED AND AGREED  
6 that all objections, except as to the form  
7 of the question, shall be reserved to the  
8 time of the trial.

9 IT IS FURTHER STIPULATED AND AGREED  
10 that the within deposition may be sworn to  
11 and signed before any officer authorized to  
12 administer an oath, with the same force and  
13 effect as if signed and sworn to before the  
14 Court.

15

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25

1 A L L A N S. P I L S O N, called as a  
2 witness, having been duly sworn by a Notary  
3 Public, was examined and testified as  
4 follows:

5 EXAMINATION BY

6 MR. DOWNING:

7 Q. State your name and business address,  
8 please.

9 A. Allan, A-l-l-a-n, middle initial S,  
10 Pilson, P-i-l-s-o-n at 26 West 61st Street, New  
11 York, 10023.

12 Q. What is your current position of  
13 employment?

14 A. I'm a partner in the firm of Ladas &  
15 Parry.

16 Q. Mr. Pilson, my name is Dick Downing.  
17 I'm an attorney with Morgan & Finnegan and we  
18 represent the defendant in the action brought by  
19 Cubatabaco against General Cigar and Culbro.

20 I'll be asking you a number of  
21 questions today. Since you're an attorney, I  
22 really don't have to explain the process, but my  
23 questions and your answers will be transcribed  
24 by the court reporter, and you will receive the  
25 transcript which you will then have the

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2 opportunity to review and make any corrections  
3 as you see fit.

4 If ever I ask a question you don't  
5 understand, please ask me to explain it and I'll  
6 be glad to.

7 If ever you want to take a break,  
8 please let me know, and when we come to a  
9 convenient stopping point, I'm sure we can  
10 accommodate you.

11 You ready to proceed?

12 A. Yes.

13 Q. I'd like to begin by marking this  
14 Exhibit 167, I believe, your business card which  
15 you kindly gave me when you came into the room.

16 (Defendants' Exhibit 167, Business  
17 card of Allan S. Pilson, marked for  
18 identification, as of this date.)

19 BY MR. DOWNING:

20 Q. Are you aware that you've been  
21 designated as a potential witness on behalf of  
22 Cubatabaco in the case against General Cigar and  
23 Culbro?

24 A. Yes.

25 Q. Do you know why?

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2 A. I would say within the last year, but  
3 I can't be more specific than that.

4 Q. Do you recall where the article  
5 appeared?

6 A. I said in the New York Times, but  
7 where I don't recall.

8 Q. Have you ever represented any  
9 representative of the Cuban government?

10 A. No.

11 Q. Have you ever represented any Cuban  
12 corporation?

13 A. Not that I'm aware of.

14 Q. Have you ever represented any citizen  
15 of Cuba?

16 A. No.

17 Q. Have you ever filed any trademark  
18 applications in Cuba?

19 A. Yes.

20 Q. When -- how many trademark  
21 applications have you filed in Cuba?

22 A. In what period of time would you like  
23 to cover?

24 Q. Well, when did you file your first?

25 A. Probably in the late '60s.



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2 Q. Who did you file the first trademark  
3 application on behalf of?

4 A. I don't recall.

5 Q. How many trademark applications have  
6 you filed since the late '60s?

7 A. In Cuba?

8 Q. Yes.

9 A. Well, this would only be a very rough  
10 guess but, very rough guess, probably 100.

11 Q. Do you recall the names of any of the  
12 applicants in those Cuban applications?

13 A. Not specifically.

14 Q. When was your most recent application  
15 in Cuba?

16 A. It's been a while. It's been a  
17 while. I can't recall.

18 Q. When you say "been a while," can you  
19 quantify that?

20 A. It's been quite a number of years I  
21 would say.

22 Q. Ten?

23 A. No. More recently than ten. I would  
24 say probably five, but again, no specific  
25 tie-in.

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2 Q. Is there any particular reason you  
3 haven't filed any trademark applications in Cuba  
4 in that time period?

5 A. No. Not that I'm aware of.

6 Q. Have you ever been involved in any  
7 litigation in Cuba?

8 A. Trademark litigation.

9 Q. Yes.

10 A. I don't recall any, no.

11 Q. Have you ever been involved in any  
12 type of litigation in Cuba?

13 A. No.

14 Q. Have you ever represented any Cuban  
15 company in litigation in the United States?

16 A. Well, let me say first of all, when  
17 you say you, I assume you're referring to me  
18 individually as well as my firm; is that  
19 correct?

20 Q. Yes.

21 A. So I'm a little hesitant just to  
22 answer on -- I understand it's appropriate, but  
23 I'm a little hesitant to answer on behalf of the  
24 entire firm.

25 May I have the question again?

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2 Q. Have you personally ever represented  
3 any Cuban litigant in the United States?

4 A. No.

5 Q. Do you know if your firm has?

6 A. I don't know.

7 Q. Have you ever provided any legal  
8 advice for Mr. Krinsky's law firm, Rabinowitz  
9 firm?

10 A. Other than this case?

11 Q. Yes.

12 A. No.

13 Q. When did you first meet Mr. Krinsky?

14 A. Last Friday.

15 Q. Prior to that time had you spoken  
16 with anyone from the Rabinowitz law firm?

17 A. Yes.

18 Q. When was that?

19 A. Assuming this is outside the  
20 privilege, I had two or three conversations with  
21 Mr. Krinsky, the first of which was probably a  
22 month, six weeks ago, maybe two months ago. I  
23 don't know exactly.

24 Q. Do you know who initiated this  
25 conversation? In other words, did you call him

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2 A. I've been to every country in Latin  
3 America, every country in Central America except  
4 Nicaragua.

5 Q. Just so we're using the same  
6 terminology, Latin America means?

7 A. Below Mexico.

8 Q. Anything below Mexico.

9 A. Anything below Mexico.

10 Q. But does not include Cuba.

11 A. But does not include Cuba.

12 Q. Have you ever seen a Cohiba cigar on  
13 sale?

14 A. On sale, no.

15 Q. Have you ever received a Cohiba cigar  
16 as a gift?

17 A. No.

18 Q. Can you give me a brief summary of  
19 your education and employment background,  
20 chronological order?

21 A. Starting where?

22 Q. Starting with college and law school.

23 A. I attended American University. I  
24 have a BA degree from American University.

25 I have a law degree from George

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2 Washington University and I've been employed by  
3 this firm since 1966.

4 Q. What law school did you graduate  
5 from?

6 A. From George Washington University law  
7 school.

8 Q. What area of specialty did you begin  
9 with this firm in 1966?

10 Withdrawn.

11 Do you practice any particular area  
12 of specialty?

13 A. Yes. I practice in the field of  
14 trademark law and overwhelmingly in the field of  
15 international trademark law, perhaps 80 percent,  
16 and the balance being domestic trademark law, as  
17 well as licensing.

18 Q. How long has that particular  
19 breakdown been the case?

20 A. It's been relatively consistent  
21 throughout my career.

22 Q. Do you practice any other type of law  
23 other than trademark law?

24 A. No.

25 Q. When you say international trademark

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2 practice, what does that encompass?

3 A. That normally refers to the filing,  
4 prosecution, maintenance and enforcement of  
5 trademark rights throughout the world.

6 Q. What percentage -- talking about your  
7 international business now. What percentage is  
8 included within filing, prosecution and  
9 maintenance and what percentage is included  
10 within enforcement?

11 A. This is difficult to quantify, but I  
12 would say that the enforcement, if we can --  
13 first if I can back up a bit.

14 If we include within the definition  
15 of enforcement, administrative opposition  
16 proceedings, the percentage would be higher.

17 If we exclude that, as some people  
18 do, and limit the definition of enforcement to  
19 litigation, it would be lower.

20 But in any event, enforcement would  
21 be in the totality, a smaller percentage than  
22 the rest.

23 Q. Can you give me an approximate  
24 percentage figure for filing, prosecution and  
25 maintenance on international?

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2 A. I would say that probably represents  
3 60 to 70 percent.

4 Q. What percentage would be represented  
5 by administrative oppositions and things of that  
6 nature?

7 A. If we use the 70 percent number, this  
8 kind of hair splitting is very difficult since I  
9 don't normally think in these terms, but of the  
10 balance, the administrative opposition work  
11 would be the majority as compared to litigation.

12 Q. Have you ever been involved in any  
13 administrative opposition in Cuba?

14 A. I probably have, but I can't recall a  
15 specific case.

16 Q. Do you recall how it might have  
17 turned out?

18 A. No.

19 Q. How does the mix in the United States  
20 break down?

21 A. Well, my work in the United States  
22 for the most part is trademark clearance; that  
23 is, searching and some filing and prosecution.  
24 I would say mostly searching.

25 Q. Have you written any books?

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2 A. I have edited a book.

3 Q. What book is that?

4 A. It's a book entitled "The Protection  
5 of Corporate Names: A Country by Country  
6 Survey" which is published under the auspices of  
7 the International Trademark Association, INTA.

8 Q. You edited that book?

9 A. Yes.

10 Q. Any others?

11 A. No.

12 Q. Have you written any articles for  
13 publication?

14 A. I have over the years written a few  
15 articles, yes.

16 Q. Do you recall any specific articles?

17 A. I wrote an article on opposition  
18 procedure a number of years ago, which I think  
19 was published, I believe it was published in  
20 Trademark World. I'm not certain.

21 I contributed a chapter on foreign  
22 trademark prosecution in a book published by, at  
23 that time the United States Trademark  
24 Association on the general subject of trademark  
25 protection.



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2 Q. Do you recall the name of that book?

3 A. I think it's called The Trademark  
4 Handbook.

5 Q. Any other articles you recall?

6 A. No, but I was, perhaps this is not  
7 responsive, but I was for two years the editor  
8 in chief of The Trademark Reporter, the law  
9 journal of the International Trademark  
10 Association. Although I didn't write any  
11 articles for that publication, I edited those  
12 articles.

13 Q. What years?

14 A. I believe this was '89 to '91. In  
15 that period. I'm not certain of the exact  
16 dates.

17 MR. DOWNING: Off the record.

18 (Discussion off the record.)

19 BY MR. DOWNING:

20 Q. Have you ever written any articles  
21 regarding treaty law?

22 A. No.

23 Q. Have you taken any postgraduate  
24 courses since leaving law school?

25 A. Yes, but not for credit.

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2 A. Well, I'm a regular attendee of both  
3 the midyear and annual meeting of the  
4 International Trademark Association. I've been  
5 attending since 1975.

6 I'm a member of ASIPI, A-S-I-P-I,  
7 which is a Latin America based trademark  
8 organization, and I am member of the executive  
9 committee of that group and I attend their  
10 annual meetings.

11 MR. KRINSKY: I'm sorry. What was the  
12 name of that?

13 THE WITNESS: A-S-I-P-I. I can give  
14 it to you in Spanish if anybody cares. It's  
15 Asociacion Interamericanos de Propiedad  
16 Industrial.

17 BY MR. DOWNING:

18 Q. You've been a member of INTA, and  
19 prior to that, the USTA since 1975?

20 A. Well, INTA does not permit individual  
21 memberships. The firm has been a member for  
22 many, many years, but my active participation  
23 began in 1975.

24 Q. Have you attended all the meetings  
25 since 1975?

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2 these days almost any year, but there was  
3 particular unrest that year, and I believe that  
4 was in '92.

5 Q. I believe you said you had an officer  
6 position with ASIPI?

7 A. Yes.

8 Q. What position?

9 A. I'm the treasurer.

10 Q. Are you also on the board?

11 A. Yes.

12 Q. What's your position on the board?

13 A. As treasurer, I hold a seat on the  
14 board, the executive committee.

15 Q. How long have you been an officer of  
16 ASIPI?

17 A. Since the late '80s.

18 Q. Has it always been treasurer?

19 A. Yes.

20 Q. Have you ever attended any meeting --  
21 withdrawn.

22 Have you ever heard any discussions  
23 of the Inter-American Convention for Trademark  
24 and Commercial Protection at any of the meetings  
25 you've attended of INTA or the USTA?

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2 A. Well, first of all, I'm aware of a  
3 treaty which is styled in general the  
4 Inter-American Convention. I'm not sure the  
5 rest of that I've heard of, but anyway, it's a  
6 1929 convention.

7 Have I heard it? I don't recall  
8 specifically, although I could not exclude that  
9 possibility.

10 Q. By comparison, have you ever heard of  
11 any discussion at INTA of the Paris Treaty?

12 A. Yes.

13 Q. Have you heard discussions at INTA of  
14 the Madrid Treaty?

15 A. Yes.

16 Q. Have you ever heard any discussions  
17 at the ASIPI of the Inter-American Convention?

18 A. I don't recall specifically.

19 Q. Do you recall if you've heard  
20 discussions at ASIPI of the Paris Convention?

21 A. Yes.

22 Q. Have you heard discussions at ASIPI  
23 of the Madrid Convention?

24 A. Yes.

25 Q. When was the first time you heard of

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2 the Inter-American Convention?

3 A. Probably around the time I began  
4 practicing in this field.

5 Q. Did you ever have the opportunity to  
6 apply the Inter-American Convention in any of  
7 your practice?

8 A. Yes.

9 Q. When was that?

10 A. Periodically in trademark opposition  
11 proceedings in those countries that are party to  
12 the convention.

13 Q. Do you recall any specific instances  
14 in which you've done that?

15 A. Yes.

16 Q. And where?

17 A. In Peru. Most recently in Peru in  
18 the last, I would say the last three years I  
19 recall a case.

20 Q. Do you recall the facts of the case?

21 A. Oh, this was a case that is not  
22 unusual in the sense that it involved an  
23 application by an unrelated, that is, a third  
24 party applied for a mark which was identical to  
25 a mark owned by our American client who had not

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2 registered the mark in Peru but it had  
3 registered the mark in the United States, and we  
4 alleged -- we brought the opposition on the  
5 basis of Article 7 of the Inter-American  
6 Convention.

7 Q. Do you recall the name of the client?

8 A. Yes.

9 Q. What was the name of the client?

10 A. I'm not sure I can tell you.

11 In fact, I choose not to tell you  
12 that.

13 MR. KRINSKY: The client has advised  
14 me that his firm considers the names of  
15 these clients and their proceedings to be  
16 confidential, and so he would decline to  
17 identify the client in response to that  
18 question.

19 BY MR. DOWNING:

20 Q. Was it an American corporation?

21 A. Yes.

22 Q. Was it a Fortune 500 corporation?

23 A. No.

24 Q. Am I correct it owned a registration  
25 for a mark in the United States?

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2 A. Yes.

3 Q. But not in Peru?

4 A. Not in Peru.

5 Q. And it asserted a claim of Article 7  
6 of the Inter-American Convention.

7 Did it assert a claim under any other  
8 law in Peru?

9 A. I am confident that we did, but I  
10 couldn't cite the article for you.

11 Q. What was the result of that  
12 opposition?

13 A. I believe we prevailed, but I can  
14 certainly check for you.

15 Q. I wish you would.

16 A. Okay.

17 Q. In that case did you establish that  
18 the applicant in Peru had knowledge of the  
19 United States registration?

20 A. Well, if I am correct that we  
21 prevailed, it would have been primarily on that  
22 basis since the marks are identical and we were  
23 able to show that we had a U.S. registration.  
24 The administrative organization that decided  
25 that case must have accepted our position that

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2 at least constructively the applicant had  
3 knowledge.

4 Q. Do you know if the administrative  
5 organization that decided that case based its  
6 decision on the Inter-American Convention as  
7 opposed to some other part of Peru law?

8 A. I don't know. As we sit here now, I  
9 don't know.

10 Q. And you're not going to tell me the  
11 trademark?

12 A. No.

13 Q. Was it a well-known trademark?

14 A. It depends what you mean by  
15 well-known.

16 Q. Well, as defined in the Lanham act.

17 A. As?

18 Q. A famous mark.

19 A. I don't know. I don't know what you  
20 would consider a well-known mark. I don't  
21 really want to characterize it.

22 Q. Have you been involved in any other  
23 proceedings where the Inter-American Convention  
24 was asserted by you or against you?

25 A. I have over the years certainly



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2 alleged -- certainly sought to rely on the  
3 Inter-American Convention in the member  
4 countries in numerous instances, although I  
5 wouldn't be able to tell you when and the  
6 particular matters.

7 Q. Well, that's what I was going to ask  
8 you.

9 A. Normally, shall I say it normally  
10 arises in those kind of circumstances where the  
11 client, our client, lacks coverage in that  
12 jurisdiction so that we have to resort to a  
13 claim other than local registration, which could  
14 mean a variety of bases, including use of the  
15 trademark in the territory without benefit of  
16 registration, the notoriety of the trademark in  
17 general, which is proven through advertising and  
18 other promotional activities, as well as the  
19 registration in a contracting state.

20 Q. Going back to the Peru case for just  
21 a second, did your client have use in Peru?

22 A. No. I don't believe so.

23 Q. Did it have notoriety in Peru?

24 A. I would doubt it.

25 Q. Did it have a registration in a

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2 contracting state?

3 A. Yes.

4 Q. What state?

5 A. In the United States.

6 Q. In the Peru opposition, did you also  
7 assert a claim under the Paris Convention?

8 A. It's possible.

9 Q. Did you assert a claim under the  
10 Madrid Convention?

11 A. I don't think Madrid would have been  
12 relevant here.

13 Q. Do you know whether you asserted a  
14 claim under the Paris Convention?

15 A. I think you asked me that.

16 Q. Well, you said it's possible.

17 A. So you're asking me again.

18 Q. I'm asking do you know for sure  
19 whether or not you did.

20 A. No.

21 Q. Do you recall any other specific  
22 instances where you have asserted the  
23 Inter-American Convention?

24 A. Not specifically, but I should say --  
25 not specifically, no.

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2 Q. Do you recall how many times you've  
3 been involved in oppositions in which the  
4 Inter-American Convention has been raised?

5 A. It's not an unusual event but it's  
6 not a common event, so in the years that I've  
7 been here, it would come up fairly regularly.

8 Q. What do you mean by "fairly  
9 regularly"?

10 A. I would say that we -- in a perfect  
11 world, a complaining party has well established  
12 rights in a country and these opposition  
13 proceedings are fairly straightforward, but  
14 there are as many cases where that is not the  
15 case; namely where a client says "I have been  
16 informed of a conflicting mark, I don't like it  
17 and I want you to do something about it," but he  
18 hasn't established solid rights in the territory  
19 so we have to resort to ancillary treaties, one  
20 of which is the Inter-American Treaty if it  
21 involves a contracted state.

22 In percentage terms, that probably is  
23 arising on a fairly regular basis throughout the  
24 firm in the course of any given year. Now how  
25 many? I don't know. Maybe ten in the course of

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2 a year throughout the firm.

3 Q. All right. How many -- I'm sorry.

4 When did you say you were involved in  
5 the Peru case?

6 A. I would say that was in the last  
7 three to four years.

8 Q. Was that the only case in the last  
9 three to four years that you can recall?

10 A. No. There are probably others.

11 Q. Do you recall any others?

12 A. I have to say that I have one client  
13 who refuses to take out registrations and we are  
14 perennially relying on these kinds of treaties  
15 on their behalf, so I would say, again, I don't  
16 want to guess, but I would think in the case  
17 that I'm thinking of, probably yes in that case,  
18 at least one other.

19 Q. Do you recall any specific instance  
20 with that one particular client though?

21 A. I don't remember the country. I'm  
22 sorry. I don't remember the country or that it  
23 involved the Inter-American Convention.

24 Q. Do you recall any specific instance  
25 in which you have filed an opposition in any

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2 MR. DOWNING: Yes.

3 A. I have no recollection of that.

4 Q. Have you ever conducted a trademark  
5 search in Cuba?

6 A. Yes.

7 Q. How often?

8 A. How often or how many times?

9 Q. How many times.

10 A. I have no specific recollection of  
11 that, of how many times.

12 Q. When was the first time you conducted  
13 a trademark search in Cuba?

14 A. Probably in the late '60s.

15 Q. When was the most recent time you  
16 conducted a trademark search in Cuba?

17 A. I believe within the past five years.

18 Q. Do you recall approximately how many  
19 searches you've done in Cuba during that time  
20 period?

21 A. No.

22 Q. More than ten?

23 A. In what period?

24 Q. During that entire time period from  
25 the late '60s to your most recent search.

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2 A. Probably more than ten.

3 Q. More than 50?

4 A. Probably not.

5 Q. I hate to box you in like this, but  
6 more than 25?

7 A. More than 25? Well, I would just be  
8 guessing. I'm sorry. I would like to be more  
9 precise, but I don't recall.

10 Q. Okay. Do you recall the  
11 circumstances surrounding your first trademark  
12 search in Cuba?

13 A. No, other than a request from the  
14 client to make the search.

15 Q. Do you know why the client requested  
16 you to make the search?

17 A. Apart from the obvious reason, to  
18 determine its availability, no. There were  
19 no -- I don't recall any special circumstances.

20 Q. Did the client want to register the  
21 mark in Cuba?

22 A. Normally a search is made with a view  
23 to registration, yes.

24 Q. Is that true -- withdrawn.

25 Was there any instance in which you

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2 conducted a trademark search in Cuba where the  
3 client did not want to register the mark in  
4 Cuba?

5 A. Well, we're not often told that at  
6 that initial stage. These searches generally  
7 arise when a marketing person expresses interest  
8 to, let's say on behalf of a corporation, to  
9 their in-house lawyer, expresses interest in the  
10 availability of a mark, and we may not be told  
11 at that stage whether the search is intended to  
12 result in the filing of an application.

13 Of course if the search turns up with  
14 a problem, then we would not file.

15 Q. Do you recall any instance in which  
16 the search did not turn up to be a problem in  
17 which you did not file in Cuba?

18 A. I don't recall.

19 Q. You don't recall one way or the  
20 other?

21 A. No.

22 Q. How do you go about searching  
23 trademarks in Cuba? How did you do it the first  
24 time?

25 A. We worked through a local agency.

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2 Q. What local agency?

3 A. It was called the Chamber of  
4 Commerce.

5 Q. Do you recall who at the Chamber of  
6 Commerce you communicated with in connection  
7 with that search?

8 A. I recall a name, a woman named Ada  
9 Acosta, Martinez I believe was her last name.

10 Q. How did you find Ms. Acosta Martinez?  
11 How did you become aware of her?

12 A. This firm was in place as an agent of  
13 our firm when I arrived here, so I became aware  
14 of her when I consulted our list of foreign  
15 agents and determined that they were, I believe  
16 our only means of obtaining that information in  
17 Cuba.

18 Q. And did Ms. Acosta do a search or  
19 have someone do a search?

20 A. Somebody did in that Chamber, yeah.

21 Q. Can you describe what a trademark  
22 search looks like or what that trademark search  
23 looked like coming from Cuba?

24 A. It would normally be a typewritten  
25 list, as I recall, of what we call the



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2 particulars of a registration, which would  
3 include the trademark, the registration date if  
4 it is registered, the registration number, the  
5 registrant that is the owner of the mark and  
6 some description of the goods and services  
7 claimed in the registration.

8 Q. Did the Chamber of Commerce conduct  
9 that first search?

10 A. They would have done so at that time,  
11 yes.

12 Q. Okay. Your most recent search,  
13 whenever it was, how did you go about conducting  
14 that search?

15 A. Well, once again we contacted the  
16 agency with whom we have a relationship or now a  
17 firm with whom we have a relationship in Cuba,  
18 and I believe it is still Ms. Acosta who is in  
19 that firm, although it is now a private or at  
20 least quasi private firm. I think they're  
21 called Lex something, L-e-x.

22 Q. Has there ever been a point where you  
23 conducted a trademark search in Cuba that was  
24 not done through either the Chamber of Commerce  
25 or Lex?

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2 A. I don't want to exclude the  
3 possibility that we may have used a third party  
4 when this privatization took place, and I'm not  
5 sure when that was, but certainly in the era of  
6 the Chamber where they were the exclusive source  
7 of this information, they would have been the  
8 only ones.

9 Q. When you say "privatization," to what  
10 were you referring?

11 A. Well, I have this -- there came a  
12 time, I suppose, and maybe I'm a little out of  
13 my depth here, but there came a time when at  
14 least Ada Acosta, if not other personnel,  
15 practiced under a different name which seemed to  
16 us to be in the nature of a private organization  
17 rather than an arm of the government. I don't  
18 know when that occurred.

19 Q. And that name is Lex?

20 A. I believe it's called Lex something.

21 Q. You say you don't know when that  
22 occurred.

23 Do you recall the approximate time  
24 period that that the change took place?

25 A. I have an idea that it was sometime

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2 in the mid '80s possibly.

3 MR. KRINSKY: The witness shouldn't  
4 speculate.

5 A. I don't know.

6 MR. KRINSKY: If he has some  
7 information, he can state it.

8 A. Yeah, I don't know.

9 MR. KRINSKY: If he's speculating, he  
10 shouldn't speculate.

11 A. I have -- I base that on something if  
12 I could share that with you.

13 As a treasurer of ASIPI, we have  
14 Cuban members, and I remember that when I became  
15 treasurer in the late '80s, as I testified,  
16 there were representatives of Lex there and so  
17 the Chamber was no longer reflected on our  
18 membership roles, if they ever were. I don't  
19 know. I don't know that. But anyway, that's my  
20 recollection, that in that period they were  
21 coming as more or less private lawyers.

22 Q. Other than Ms. Acosta, do you recall  
23 any of the names of the attorneys at Lex?

24 A. No, I don't.

25 Q. Have representatives of Lex ever

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2 attended the INTA, to your knowledge?

3 A. I believe so, yes.

4 Q. Do you recall what years?

5 A. I couldn't tell you when, but I'm  
6 fairly confident that I've seen Ada Acosta at  
7 INTA meetings, yes.

8 Q. Just to clarify, do you recall  
9 whether or not you ever used a third party at  
10 any time?

11 A. I don't recall.

12 Q. Ever doing it?

13 A. I don't believe I have ever.

14 Q. What did the most recent search  
15 report look like?

16 A. Apart from improved typewriter font,  
17 it didn't look too much different than it did  
18 many years earlier. It's still a typewritten  
19 list of particulars.

20 Q. So it just lists the marks and the  
21 particulars of the marks?

22 A. Yes.

23 Q. Did Lex or Ada, did Lex or the  
24 Chamber of Commerce ever render an opinion as to  
25 availability?

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2 A. I don't recall, but I would say my  
3 impression generally is that they are very bare  
4 bones reports.

5 Q. So as a general rule would not have  
6 an opinion?

7 A. No.

8 Q. Has there ever been any time period  
9 since you began your practice in which a United  
10 States registrant was precluded by law --  
11 withdrawn.

12 Has there ever been a time period  
13 since you began your practice in which a United  
14 States applicant was precluded by law from  
15 applying to register for a trademark in Cuba?

16 A. No, not in my recollection.

17 Q. Has there ever been a time period in  
18 which a United States applicant or owner of a  
19 registration would have been precluded from  
20 bringing an opposition proceeding in Cuba by  
21 law?

22 A. I don't recall any such time period.

23 Q. Has there ever been a period during  
24 your practice in which a United States citizen  
25 was precluded by law from commencing litigation

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2 in Cuba?

3 A. I don't recall any such period.

4 Q. Has there ever been a period of time  
5 since you've been practicing law in which a  
6 citizen of Cuba has been precluded from  
7 registering a trademark in the United States?

8 MR. KRINSKY: Objection. There's no  
9 foundation as to his knowledge on that  
10 subject.

11 MR. DOWNING: Well, he's practiced  
12 international trademark law for --

13 MR. KRINSKY: He was very precise  
14 about what his practice is.

15 A. I don't have any information on that.

16 Q. Has there ever been a period of time  
17 which a United States -- check, in which a --  
18 withdrawn.

19 Has there ever been a period of time  
20 in which a citizen of Cuba has been precluded  
21 from bringing opposition proceedings in the  
22 United States?

23 MR. KRINSKY: Same objection.

24 A. I don't have any knowledge of it, no.

25 Q. Are you aware of any such law that

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2 Q. No. I was hoping you would be able  
3 to tell me.

4 Well, we know Cuba and the United  
5 States.

6 A. I would say that, again, in the first  
7 instance we would confine our search to those  
8 territories where the client had instructed us  
9 to search, which we assumed is reflective of  
10 their marketing interests.

11 Q. So the answer is no?

12 A. The answer is no.

13 Q. Do you know if Cuba is a member of  
14 the Inter-American Convention?

15 A. Yes, they are.

16 Q. How do you know that?

17 A. I know that from my experience as a  
18 practitioner in this field.

19 Q. Do you know whether the  
20 Inter-American Convention is self-effectuated in  
21 the United States?

22 MR. KRINSKY: When you say you know,  
23 are you asking for his opinion about a legal  
24 matter?

25 MR. DOWNING: He's practiced

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2 Q. Do you have any opinion as to whether  
3 or not the Inter-American Convention is  
4 self-effectuated in the United States?

5 A. No.

6 Q. Are you aware of any facts that  
7 suggest that the Cuban Cohiba cigar is famous in  
8 the United States?

9 MR. KRINSKY: Objection. Lack of  
10 foundation.

11 A. No.

12 Q. Have you ever had any communications  
13 with any representative of Habanos, S.A.?

14 A. No.

15 Q. Have you ever had any communications  
16 with any representatives of Cubatabaco?

17 A. No, but in either -- in both  
18 instances my only connection is with Counselor  
19 Krinsky.

20 Q. Have you ever had --

21 MR. KRINSKY: Gesturing to me.

22 BY MR. DOWNING:

23 Q. Have you ever had any communications  
24 with an individual by the name of Mr. Garrido,  
25 G-a-r-r-i-d-o?



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2 direct colloquy like that to the witness'

3 attorney, not to the witness.

4 MR. DOWNING: Mr. Pilson, thank you.

5

6 (Time noted: 11:22 a.m.)

7

8

9

10 ALLAN S. PILSON

11

12 Subscribed and sworn to before me

13 this \_\_\_\_ day of \_\_\_\_\_, 2001.

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## C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, ANNETTE ARLEQUIN, a Shorthand

Reporter and Notary Public within and for  
the State of New York, do hereby certify:

That ALLAN S. PILSON, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the  
testimony given by the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 9th day of August, 2001.

  
ANNETTE ARLEQUIN, CSR, RPR

My commission expires:  
6/30/02

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

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EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
-----		X

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition  
Transcript of Rosalie Plasencia, dated September 21, 2001**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVue Nos. 138, 136, 135, 132, 91 and 89.

COPY

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IN THE UNITED STATES DISTRICT COURT

3

FOR THE SOUTHERN DISTRICT OF NEW YORK

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EMPRESA CUBANA DEL TABACO, d.b.a.

6

CUBATABACO,

7

Plaintiff,

97 Civ. 8399 (RWS)

8

vs.

9

CULBRO CORPORATION and GENERAL

10

CIGAR CO., INC.,

11

Defendants.

12

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14

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16

DEPOSITION OF ROSALIE PLASENCIA

17

New York, New York

18

Friday, September 21, 2001

19

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21

22

23

24

Reported by:

ANNETTE ARLEQUIN

25

CSR NO. 1450

1

2

April 27, 2001

3

1:35 p.m.

4

5

Deposition of ROSALIE PLASENCIA, held

6

at the offices of MORGAN &amp; FINNEGAN, LLP,

7

345 Park Avenue, New York, New York,

8

pursuant to Subpoena, before ANNETTE

9

ARLEQUIN, a Certified Shorthand Reporter and

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a Notary Public of the State of New York.

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## 2   A P P E A R A N C E S:

3

4

5       RABINOWITZ, BOUDIN, STANDARD, KRINSKY &amp;

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14       Attorneys for Defendants

15               345 Park Avenue

16               New York, New York   10154-0053

17       BY:   DICKERSON M. DOWNING, ESQ.

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2

IT IS HEREBY STIPULATED AND AGREED,

3

by and between the attorneys for the

4

respective parties herein, that filing and

5

sealing be and the same are hereby waived.

6

IT IS FURTHER STIPULATED AND AGREED

7

that all objections, except as to the form

8

of the question, shall be reserved to the

9

time of the trial.

10

IT IS FURTHER STIPULATED AND AGREED

11

that the within deposition may be sworn to

12

and signed before any officer authorized to

13

administer an oath, with the same force and

14

effect as if signed and sworn to before the

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Court.

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1

2 ROSALIE PLASENCIA, called as

3 a witness, having been duly sworn by a

4 Notary Public, was examined and testified as

5 follows:

6 EXAMINATION BY

7 MR. DOWNING:

8 Q. State your name and address, please.

9 A. Rosalie Plasencia, 4410 Broadway,

10 Apartment 4-J, New York, New York, 10040.

11 Q. What's your current position of

12 employment?

13 A. I'm a freelance interpreter.

14 Q. Do you have a business card with you

15 today?

16 A. I'm sorry, I do not have one.

17 Q. Well, my name is Dick Downing. I'm

18 with the law firm of Morgan &amp; Finnegan. We

19 represent the defendants, General Cigar and

20 Culbro, in a case brought by Cubatabaco for

21 trademark infringement.

22 I'll be asking you a number of

23 questions today. My questions and your answers

24 will be transcribed by the court reporter on

25 your right. You will then have a transcript



1 Plasencia

2 accidental I was called as an interpreter.

3 Being a freelancer, I get these calls very  
4 often, and I said yes because I was available,  
5 not knowing what and who I was going to be  
6 interpreting for.

7 But during the session I -- and the  
8 contact with the persons there, I realized that  
9 this was a person who was working for  
10 Cubatabaco. Having lived in Cuba for 30 years  
11 and the atmosphere in which I worked, I was  
12 familiar with a number of things that were being  
13 discussed there.

14 Q. Have you ever worked for  
15 Mr. Krinsky's firm prior to this time?

16 A. Never, no.

17 Q. Okay.

18 A. I have no knowledge of them at all.

19 Q. Over what period of time were you  
20 living in Cuba?

21 A. Between 1960 and 1992 was when I  
22 reestablished residence, permanent residence in  
23 New York City.

24 Q. Where were you born?

25 A. New York City.

1 Plasencia

2 Q. Okay. I hate to ask this, but just  
3 for my time frame, what year were you born?

4 A. That's all right.

5 Q. What year were you born?

6 A. That's fine. 1945. I don't have a  
7 problem with that.

8 Q. Okay. You were born in 1945.

9 A. 1945.

10 Q. You went to Cuba in 1960.

11 A. Late 1959 actually.

12 Q. What was the purpose of your going to  
13 Cuba in late 1959?

14 A. I was about to turn 14 then. I was a  
15 minor. My parents are Cuban and they went back  
16 to their country of origin taking me with them.

17 Q. What did your father do in Cuba?

18 A. After '59?

19 Q. Um-hmm.

20 A. He had properties.

21 Q. What properties?

22 A. He had a couple of buildings, rented  
23 apartments.

24 Q. Did he own them?

25 A. Yes, he did.

1 Plasencia

2 Q. Did your mother have employment in  
3 Cuba?

4 A. No, never. Not before, after '59.

5 Q. Okay. And you lived in Cuba from  
6 1959 to --

7 A. Late '59 to --

8 Q. 1992.

9 A. 1992.

10 Q. Why did you return to the United  
11 States in 1992?

12 A. My first visit after 30 years was in  
13 1990. All this time my mother was living in the  
14 U.S. She went to Cuba in '59 but came back two  
15 years later, so she had been here all that time.  
16 And in 1990 I visited her, went back to Cuba,  
17 and in 1992 I decided to come back and  
18 reestablish residence here.

19 Q. Where did your mother live?

20 A. She lived and still lives in  
21 Manhattan.

22 Q. Were you ever employed while in Cuba?

23 A. Yes, I was.

24 Q. By whom were you employed?

25 A. I was a government employee as

1 Plasencia

2 everybody is in Cuba. I worked 13 years for

3 INDER, a sports organization.

4 Q. I'm sorry. How do you spell that?

5 A. The acronym is I-N-D-E-R, INDER.

6 It's an acronym. For 13 years and -- may I

7 correct that. 12 years.

8 And 13 years in ESTI, which is

9 another acronym, E-S-T-I.

10 Q. What is ESTI, what type of business?

11 A. ESTI stands for, it's the translation

12 and interpretation team that's ascribed to the

13 Council of Ministers.

14 Q. What languages do you speak?

15 A. My working languages are English and

16 Spanish.

17 Q. Any others?

18 A. No, not for word purposes.

19 Q. So you were translating from English  
20 into Spanish?

21 A. Into Spanish for Cuban officials,  
22 yes.

23 Q. What type of material were you  
24 translating?

25 MR. KRINSKY: Objection as to the

1 Plasencia

2 time frame.

3 BY MR. DOWNING:

4 Q. All right. Let's go back.

5 When did you begin work with INDER?

6 A. 1967. That was a part-time --

7 between 1967 and 1970 I was still in school and

8 I had a part-time job.

9 I became a full-time employee in 1970

10 as part of the translation department.

11 Q. Of the sports organization?

12 A. Yes.

13 Q. What's the business of the sports

14 organization?

15 A. Sports.

16 Q. What were you translating?

17 A. I was translating sports material,

18 training plans, sports medicine, all sorts of

19 literature, and I also devoted a lot of my time,

20 my working hours, as an interpreter visiting

21 teams and delegations.

22 Q. What type of sports were under the

23 aegis of the sports authority?

24 A. All the Olympic sports other than ice

25 sports. Considering this is a tropical country,

1 Plasencia

2 they don't practice winter sports.

3 Q. And did your position change over the  
4 years while you were at INDER?

5 A. It did not change; however, what I  
6 was doing, as in the first -- between 1970 and  
7 1979 I would say during the first five, five or  
8 six years, I was basically working with teams,  
9 visiting teams who were competing with Cuban  
10 athletes or against, and for the next three  
11 years as I earned a reputation, I was basically  
12 working with the president of INDER assisting  
13 him with foreign delegations, visiting foreign  
14 negotiations, discussions, technical or  
15 different sports arrangements.

16 Q. But it was primarily translation  
17 work?

18 A. Interpretation.

19 Q. Interpretation?

20 A. Yes.

21 MR. KRINSKY: Let me suggest --

22 A. Slow interpretation.

23 MR. KRINSKY: -- that maybe we can  
24 get some definitions to avoid confusion.

25 The way I understand translation,

1 Plasencia

2 A. Basically, yes. For the first five  
3 or six years I was translating and interpreting  
4 when there were visiting teams, and during the  
5 last three years, three, four years, I was not  
6 working with teams anymore but as the sports  
7 organization president's interpreter.

8 Q. What was the nature of your work for  
9 ESTI?

10 A. I started working at ESTI in 1979,  
11 and basically as a conference interpreter,  
12 simultaneous interpretation, which is done at  
13 conferences.

14 Q. What type of conferences?

15 A. All sorts of conferences; technical,  
16 political, medical, scientific. All sorts of  
17 conferences.

18 Q. Where were these conferences held?

19 A. At Cuba's convention center, at  
20 conference rooms in hotels, and many were held  
21 abroad and I traveled abroad as part of a team  
22 as a conference interpreter. That was not the  
23 only thing I did in ESTI, but basically that was  
24 my appointment.

25 I also did translations, and at times

1                                   Plasencia  
2   when there were major events in the country and  
3   many delegations visiting, we all had to work  
4   with delegations as consecutive interpreters or  
5   escort interpreters.

6           Q.     During the period 1959 to 1992, how  
7   many times did you travel outside of Cuba?

8           A.     Forty, fifty. I couldn't tell. The  
9   average, average was four times a year. It  
10   could be five, six, it could be two, but the  
11   average was four times a year and I did this for  
12   fourteen years.

13          Q.     So am I correct most of your trips  
14   were -- all of your trips were during the period  
15   you were employed by ESTI?

16          A.     Yes, absolutely. I didn't travel  
17   before that. Since I went to Cuba.

18          Q.     What countries did you travel to?

19          A.     You want me to name them?

20          Q.     Well, if you can recall them.

21          A.     Okay. In Central America, Panama,  
22   Nicaragua, Costa Rica. In the Antilles or  
23   Caribbean, in Grenada, Barbados, Curacao. I  
24   might forget some. I haven't gone through this  
25   list in a long time.



1 Plasencia

2 Q. That's okay.

3 A. In Europe, western Europe, Austria,  
4 Spain, France on transit but only on transit for  
5 a few days.

6 In eastern Europe, USSR at that time,  
7 Russia today, Yugoslavia, Bulgaria,  
8 Czechoslovakia basically I think.

9 In Asia, North Korea, Indonesia  
10 twice, India.

11 In Africa, Sierra Leone, Zimbabwe,  
12 Zambia, Angola.

13 I can't think of any others. I've  
14 told you a lot.

15 Q. That's a fair number. Quite well  
16 traveled.

17 A. Yes.

18 MR. DOWNING: Off the record.

19 (Discussion off the record.)

20 MR. DOWNING: Okay. Back on the  
21 record.

22 BY MR. DOWNING:

23 Q. Did you ever meet Fidel Castro?

24 A. Yes, I did.

25 Q. Okay. And on what occasion?

1 Plasencia

2 A. Number of occasions. On the job.

3 Q. On the job?

4 A. On the job.

5 Q. Are you aware that this lawsuit  
6 involves a dispute over trademark rights to the  
7 mark Cohiba as used on cigars?

8 A. Yes, I am.

9 Q. Before you talked with Mr. Krinsky  
10 earlier this year as you discussed, had you  
11 heard of the Cohiba cigar?

12 A. Oh, absolutely.

13 Q. When did you first hear of the Cohiba  
14 cigar?

15 A. I did tell you I lived in Cuba for 30  
16 years.

17 Q. Yes.

18 A. I started hearing about Cohibas in  
19 the '70s.

20 Q. You recall the first time you heard  
21 about Cohiba cigars?

22 A. Um, I can't recall an exact time,  
23 day. This was not an important occurrence that  
24 there was any reason for me to retain any  
25 memories of it. But in the '70s, probably late

1                   Plasencia

2    '70s, after a while working in INDER, but as  
3    Mr. Bango, he was the president of INDER, it was  
4    during his time that I worked there,  
5    everybody -- I mean Cohiba was a very common  
6    name.

7           Q.     Am I correct you think you heard it  
8    probably in the late '70s?

9           A.     I believe so, yes.

10          Q.     Do you recall in what connection you  
11   first heard of the Cohiba cigar?

12          A.     The only way I can describe this is  
13   in very general terms. Because of where -- even  
14   since the late '70s, this -- after 1979 and with  
15   ESTI, I was working full time with high  
16   government officials, because that's what they  
17   do and that's the kind of service that ESTI  
18   provided and the agencies to whom it provided  
19   it.

20                 But even before that while I was  
21   working with the president of INDER, Castro used  
22   to play basketball every Friday in the '70s at  
23   the basketball court in INDER's central  
24   headquarters where I used to work, so Castro was  
25   a common figure there. People used to talk

1                   Plasencia

2    about him.   He was the president of the nation

3    and he -- I mean he was not a common president.

4           Q.    I'm sorry.   Not a?

5           A.    I'm sorry?

6           Q.    I didn't hear you.

7           A.    The common president you don't  
8    discuss unless there's a national issue, but  
9    this was somebody who had a very public life and  
10   everybody talked about him.   At some point he  
11   started smoking Cohibas and I don't know when  
12   that was, but Cohibas came up and always in  
13   association with his name, Fidel.   Fidel, he was  
14   always smoking.   He use to smoke these long  
15   cigars.   He was smoking Cohibas.   Oh, now he  
16   smokes Cohibas.   And I just started hearing  
17   about Cohibas at that time in a very unofficial  
18   manner.   That's when I began hearing about  
19   Cohibas.

20          Q.    So am I correct you have a general  
21   recollection of hearing but you don't recall the  
22   specific time you first heard of Cohibas?

23          A.    Well, I can mention specific times,  
24   the earliest specific times when I had a Cohiba  
25   in my hand, for example.

1                   Plasencia

2           Q.     Okay.

3           A.     As INDER's president's interpreter,  
4     and as I said, at that -- during my last three  
5     or four years in ESTI, this is what I did and I  
6     was his interpreter at meetings, these were no  
7     longer teams, but meetings with foreigners of  
8     all nations, including the U.S., who visited  
9     INDER to negotiate, discuss, arrange tournaments  
10    and I was his interpreter.

11                And usually as host, he would invite  
12    these delegations to dinner at least once, and  
13    we would sit at a reserved table in a  
14    restaurant, a table like this, probably bigger,  
15    and I would be there as his interpreter, and  
16    after dinner and coffee was served, a box of  
17    cigars would be passed, and this was common  
18    practice and they were not always Cohibas.

19                But one day, and not at the very  
20    beginning but somewhere along those years where  
21    I was working with him, sitting around the  
22    dinner table with him, cigars were passed and  
23    one day they passed Cohibas. And I remember  
24    that because I was very excited because that was  
25    the cigar associated with Castro which Castro

1                   Plasencia

2   smoked.   They gave Cohibas and they would pass  
3   them around.   Of course I don't smoke and nobody  
4   in my family did, but this is a Cohiba, so I  
5   picked one myself and took it home.   They gave  
6   us Cohibas.   They passed out Cohibas to us.

7                   And then it happened several times  
8   after that.   Cohibas became a popular cigar at  
9   that level which was always offered to guests.

10           Q.    Do you remember when this first  
11   dinner took place that you just talked about?

12           A.    I could not pinpoint it, no.   '77,  
13   '70 -- it was between '76 and '78.   Definitely  
14   between '77 and '78.

15                   It wasn't one dinner, it was -- it  
16   occurred many times and cigars were always  
17   offered, which is I mean in a country that  
18   produces the best cigars in the world, so they  
19   say, it was normal that they would offer cigars.  
20   And at one point the cigar that was being  
21   offered was Cohibas and this happened the first  
22   time, and after that it occurred very often.

23           Q.    Do you recall how many dinners you  
24   attended where Cohibas cigars were given out?

25           A.    I couldn't give you a number.   That

1                   Plasencia  
2   was my job. I did that regularly. Cohibas were  
3   not always offered, but they were sometimes, and  
4   towards the later years it became the symbol of,  
5   I don't know, it was like a symbol of the  
6   revolution. I don't know. Cohiba is the  
7   revolution, Cuba, Fidel so -- and it was  
8   definitely the government gift, the state gift  
9   that was given to foreigners.

10       Q.    Okay. So am I correct you don't know  
11   how many dinners you attended at which Cohibas  
12   were given out?

13       A.    I don't think I should give you a  
14   number. 10, 15, 20? It was common. It was an  
15   everyday occurrence. This was not unusual.

16       Q.    I'm just talking about dinners where  
17   Cohibas were given out.

18       A.    Cohibas, Cohibas. In the later part  
19   of my career in ESTI, 10, 15, times but, you  
20   know...

21                   MR. KRINSKY: I think either the  
22   question or response lost its time frame. I  
23   had understood the question, the last  
24   question, to be asked about how many dinners  
25   in which Cohibas were given while she was

1 Plasencia

2 working at INDER.

3 THE WITNESS: That's the way I  
4 understood it.

5 MR. KRINSKY: And then your answer I  
6 believe referenced ESTI. So I think there  
7 may have been a loss of the time frame on  
8 one end or both ends of the table.

9 BY MR. DOWNING:

10 Q. All right. Let's just to break it  
11 down.

12 A. Um-hmm.

13 Q. Do you recall how many dinners you  
14 attended while employed by INDER at which  
15 Cohibas were passed out?

16 A. The figure is the same. My  
17 recollection of cigars being passed around at  
18 dinners was when I was working in ESTI. I'm  
19 sorry. I'm sorry. INDER, INDER. During my  
20 years in ESTI, this was not what I did  
21 regularly. I only did that occasionally while  
22 in ESTI, meaning sitting around at a dinner  
23 table. Not that I did not have knowledge and  
24 witness Cohiba cigars being offered, but not an  
25 at a dinner table. This was part of my job.



1                   Plasencia

2   while in INDER.

3           Q.    Okay. While at INDER, who attended  
4   the dinners at which Cohiba cigars were passed  
5   out?

6           MR. KRINSKY:  Objection to the form.

7           Are you asking for specific names or  
8   types of persons or --

9   BY MR. DOWNING:

10          Q.    Or teams?

11          A.    No, not teams, not teams.  We're  
12   talking of sports officials from the IOC, from  
13   other sports, world sports federations, private  
14   individuals engaged in sports and with an  
15   interest in sports, people, television and  
16   broadcast personnel at times when certain  
17   championships were held in Cuba like boxing and  
18   weightlifting.  The first amateur boxing in '74,  
19   I believe, and weightlifting in '73, I believe,  
20   were held in Cuba.  I was involved and this was  
21   a world championship where countries from all  
22   over the world came, and certain televisions  
23   people went to Cuba to negotiate television  
24   broadcasting rights.

25                So there were people of this nature.

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2 Never athletes, no. Athletes were not invited  
3 by the president of INDER to dinner.

4 MR. KRINSKY: The witness used --  
5 referred to IO something. IOC.

6 THE WITNESS: International Olympic  
7 Committee. I'm sorry.

8 BY MR. DOWNING:

9 Q. Were any Americans included in these  
10 groups that attended dinners while you were at  
11 INDER at which Cohiba cigars were passed out?

12 A. During INDER, during my time in INDER  
13 I can't say yes or no because everybody -- it  
14 was a courtesy. Everybody was invited to  
15 dinner. Once a foreign delegation of people  
16 visited to meet with INDER's president, they  
17 were always invited to dinner. This was a  
18 common practice. This was a courtesy offered by  
19 the host.

20 Everybody, Americans, whenever  
21 Americans, and not that Americans were the most  
22 frequent visitors, they were not, but they were  
23 there, and like every other visitor, they were  
24 always invited by the president, and at those  
25 dinners, coffee was always served and cigars

1                   Plasencia

2   were always passed.

3                   It was not at the beginning, it was  
4   after some time, between '76 and '78 but not at  
5   the very beginning, that Cohibas started being  
6   passed around and I saw them for the first time  
7   at a dinner table. This was not the first  
8   reference of Cohiba. I already said this. We  
9   knew that Castro smoked Cohibas and so on and so  
10   forth.

11           Q.    Okay.

12           A.    And they could have been Americans,  
13   they could have been other foreigners. I can't  
14   exactly tell. To me it wasn't important then.  
15   I have no reason to have retained that in my  
16   memory.

17           Q.    Do you have any specific  
18   recollections of any Americans attending dinners  
19   at which Cohibas were passed out while you were  
20   at INDER?

21           A.    No, not of Americans specifically  
22   while I was at INDER, but I do have  
23   recollections of Americans smoking Cohibas after  
24   that.

25           Q.    Okay. We'll get to that in just a

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2           Q.    Did you ever see anyone smoke a  
3   Cohiba cigar during those years other than  
4   people who attended these dinners that you have  
5   described?

6           MR. KRINSKY:  You're talking about the  
7   INDER years?

8           MR. DOWNING:  Yeah, still the INDER  
9   years.

10          A.    Yeah.  Cohibas were known by then and  
11   they were very popular because as far as I can  
12   remember and my recollection, these were the  
13   years when I became aware of Cohibas and I don't  
14   remember them as being bought as commonly as I  
15   do remember after 1979, but I remember people  
16   smoking them and because this was the atmosphere  
17   where I worked with foreigners and people who,  
18   among other things, when you travel, you  
19   explore, and people who traveled, these people  
20   who traveled, invited by INDER, I believe like  
21   any other traveler, they knew about Cohibas,  
22   and they had the expectations that they would  
23   get Cohibas and buy Cohibas.

24                  I don't have an exact recollection of  
25   what delegation, what foreigners this was, but

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2   even at that time they were interested in  
3   Cohibas and where they could buy Cohibas and how  
4   they could get Cohibas, so this was something  
5   that visitors -- everybody who went to Cuba  
6   wanted to meet Castro, okay, whether or not they  
7   were politically involved or had anything to do  
8   with Castro, and they wanted to smoke a Cohiba  
9   even if they were nonsmokers. It was the  
10  excitement of traveling, and in this case to  
11  Cuba where those were symbols.

12           Q.   How did you know they all wanted to  
13  smoke a Cohiba?

14           A.   Oh, because I was working with them.  
15  I used to work with them. These were the people  
16  I worked with.

17           Q.   Do you recall how many conversations  
18  you had with these people regarding Cohiba  
19  cigars?

20           A.   Everybody who traveled to Cuba wanted  
21  to know about Cohibas, wanted to buy Cohibas.  
22  They were curious. Curious I think would be a  
23  very neutral word to describe it. They were  
24  curious about Cohibas because the word was  
25  attached to Fidel and I think that's how Cohibas

1                   Plasencia

2   arrived.

3                   In addition to their quality, I don't  
4   know, I don't smoke cigars, but in addition to  
5   their quality, the fact that it was Fidel who  
6   brought them out publicly by smoking in public  
7   and that was the cigar he started smoking at  
8   some point, I don't know when, but the name was  
9   definitely, definitely associated to him. That  
10   was his cigar and everybody who went to Cuba was  
11   curious to meet this man who is so

12   controversial, and they wanted to have, hold,  
13   have a cigar, a Cohiba, and they asked for it.

14           Q.    Did they ask for Cohibas by name?

15           A.    Cohibas, yes. Cohiba was the name,  
16   absolutely. Absolutely.

17           Q.    And how many people talked about  
18   Cohibas during the INDER years that you had  
19   conversations with?

20           A.    I repeat, I think I said this before,  
21   delegations I worked with and I assisted, I  
22   escorted, it was -- this was one of the things  
23   that they would definitely ask about.

24   Foreigners, they visit Cuba, they want to know  
25   if they're going to meet Castro and at some

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2   point can we get Cohibas here, can we buy them,  
3   do you know where. It was a common interest or  
4   curiosity. Everybody did. I can't count them.

5                   I'm not saying there wasn't an  
6   exception, somebody who did not smoke and was  
7   reluctant to smoking, because I do know a lot of  
8   nonsmokers and I saw a lot of nonsmokers  
9   lighting Cohibas just for the pleasure of  
10   lighting a Cohiba and putting it out fifteen  
11   minutes later. They were nonsmokers but...

12           Q.   Did anyone ever ask you during the  
13   INDER period where they could get Cohibas?

14           A.   Yes, they did.

15           Q.   Do you recall how many?

16           A.   I didn't keep count of that.

17           Q.   More than ten? Less than ten?

18           A.   More than ten, because that was my  
19   job, working with foreigners. That's what I  
20   did. That was my job. So full time I was  
21   dealing with foreigners, and all foreigners came  
22   asking for Cohibas. It was a common interest,  
23   curiosity. How many? I don't know.

24           Q.   When people asked you "Where can I  
25   get Cohibas," what did you tell them?

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2           A.   Hotels were basically the places  
3 where -- I'm not sure whether hotels at that  
4 time, but definitely at the diplostore. There  
5 was one diplostore in those days, today there  
6 are many, but there was one diplo on 42nd and  
7 Fifth Avenue in an area called Miramar, and  
8 that's where they would be taken for their  
9 shopping and basically that's where we would  
10 refer them or take them.

11          Q.   Do you know if Cohibas were on sale  
12 in the store at 42nd and Fifth?

13          A.   They were.

14          Q.   During that time period.

15          A.   I'm almost certain they were, almost  
16 certain they were, but I'm not saying yes  
17 definitely, but I'm almost certain they were.

18          Q.   But I believe you just testified you  
19 never saw them in any diplostore during that  
20 time period; is that correct?

21          A.   There was only one diplostore during  
22 that time, in '59. There was only one  
23 diplostore. Yes, that was a diplostore.

24                   There were. Actually there were. In  
25 Havana Libre there was a store, Havana Libre



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2 Hotel, which in those days was the hotel used by  
3 EST -- by, I'm sorry, INDER to accommodate their  
4 guests. And this is very early on, but I could  
5 not give you a date. I cannot give you an exact  
6 year, but this was one of the first places where  
7 a cigar store was opened in Havana Libre.

8 Q. Let me go back to the diplostores.

9 Am I correct you never saw Cohibas  
10 for sale in a diplostore during the INDER years?

11 MR. KRINSKY: Objection. That  
12 mischaracterizes her testimony.

13 A. When you asked me if I saw them on  
14 sale, when I used to visit the diplostores with  
15 my family, with my husband, I never went to buy  
16 cigars. This was not -- you can ask me for  
17 other items I remember very clearly because they  
18 were those things I would go there to buy, not  
19 cigars. My husband or nobody around me smoked  
20 cigars. This was not something I bought myself,  
21 it was not an item that we had at home, but in  
22 my work environment I was asked about Cohibas  
23 all the time, and the diplostore was one of the  
24 places where we would send them because that's  
25 where they would be sold.

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2           Q.     How do you know they were sold in  
3     diplostores, in the diplostore at that time?

4           A.     As an interpreter working with  
5     delegations, there's certain information that we  
6     know because we need to know it, probably  
7     because one first time somebody said, "I want to  
8     buy Cohibas," then I would have to go back to  
9     one of the officials and ask them, "They're  
10    asking for Cohibas, where can they get Cohibas?"  
11    And they would be referred to that place.

12          Q.     Do you recall ever having that  
13    conversation you just described with anyone?

14          A.     I must have asked at one point, yes.  
15    Like I asked, they want this, where do I go?  
16    They want that, they want to eat this, where do  
17    I take them? They want to buy this, where can I  
18    take them? Can they? Is it available?"

19                 We had a protocol chief who was the  
20    person who gave us instructions and orientation.

21          Q.     What was the name of the protocol  
22    chief?

23          A.     Timoneda was his last name.

24    T-i-m-o-n-e-d-a. Mr. Timoneda.

25          Q.     Do you remember any specific

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2   was not involved in the cigar industry. I can't  
3   tell that. This is not information that I had  
4   or I had to focus on at all.

5           Q.   Did you know anyone at Cubatabaco  
6   while you were employed by INDER?

7           A.   No. No.

8           Q.   Had you heard of Cubatabaco?

9           A.   Oh, I don't know whether I started  
10   hearing about Cubatabaco in 1979 INDER, 1979  
11   ESTI. I knew of course I heard about  
12   Cubatabaco. Actually, the cigar industry was  
13   something that was proudly shown to foreigners,  
14   but this was in my ESTI years where I visited  
15   cigar factories and where I -- my association  
16   and my recollection of Cohibas are very clear at  
17   that time, because like I said, this was a state  
18   gift and I was working with dignitaries and high  
19   government officials so it was always present.

20           During my INDER years, that was not  
21   something that this was sports and people were  
22   curious and asked for Cohibas, but it was a  
23   different context.

24           Q.   Do you recall the first time a person  
25   did ask for Cohibas?

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2 and weightlifting championships, but this was in  
3 the early '70s and I don't remember Cohibas  
4 specifically being used as a name.

5 Q. Do you have any knowledge as to  
6 whether or not any Americans purchased Cohiba  
7 cigars during the period you were employed by  
8 INDER?

9 A. Not during that period. I do have  
10 recollections of it after that.

11 Q. Okay. What recollections do you have  
12 after that period regarding the purchase of  
13 Cohiba cigars by Americans?

14 A. Very specifically, and like I said,  
15 this was something very common, but this was one  
16 specific occasion which I remember because it  
17 was important, there was a lot of fuss around  
18 it, when Gorbachev visited Cuba. Probably the  
19 first half of the '80s. I don't remember the  
20 exact year, but he visited Cuba and ABC and NBC,  
21 like many other -- I mean all world media was  
22 there to cover the event, and I did the  
23 interpretation, simultaneous interpretation, of  
24 Castro's and Gorbachev's speech in a public  
25 rally that was held.

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2                   On occasion of that visit, we did  
3 this from a room in the Havana Libre hotel where  
4 all the television stations and staff crews were  
5 set up, and I clearly remember very well ABC and  
6 NBC because they were very nice guys.

7 Television crews are very informal people.

8                   And the interpreters who were there,  
9 this was interpreted not only into English but  
10 Russian and, I think there was only English and  
11 Russian interpreters there, and the ABC and NBC  
12 crews were there and they were smoking cigars,  
13 and they had a lot of fuss about the Cohibas  
14 cigars and they were smoking cigars.

15                  And we had a very good relationship  
16 with them. They gave us T-shirts. It was a  
17 very exciting time and occasion for everybody.  
18 And for us, and for the interpreters, for  
19 myself, it was the first time that I was  
20 involved with television crews and that kind of  
21 atmosphere, I'll be honest, and they were  
22 smoking cigars. They had Cohibas and they were  
23 very excited about the Cohibas. It was like a  
24 joke. I don't even think they were serious  
25 smokers, which like I said before, it was just

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2   going there and smoking Cohibas and having  
3   Cohibas.

4                   But specifically NBC and ABC crews  
5   there for Gorbachev's visit, they were smoking  
6   and I was there. I took the interpretation into  
7   English, which was broadcast live to the U.S.

8           Q.     Do you recall what year that was?

9           A.     I don't recall the exact year, but  
10   Gorbachev was in Cuba only once, so we can look  
11   that up, but it was in the '80s.

12          Q.     Do you recall the names of the men on  
13   the television crews?

14          A.     Not at all.

15          Q.     Or the women?

16          A.     No. They were men. Most of them  
17   were men. No.

18          Q.     Do you recall what they said, if  
19   anything, about the Cohiba cigars?

20          A.     Basically they were joking among  
21   themselves about the Cohibas and just teasing,  
22   joking, the kind of thing that these guys do  
23   among themselves, and we were part of it because  
24   we were in the same room. Nothing serious. I  
25   didn't have a serious discussion with them about

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2 relay. There was a Russian interpreter there  
3 interpreting from Russia into Spanish. We were  
4 doing into English from the Spanish relay, and  
5 that's how simultaneous interpretation is done  
6 worldwide and in any context.

7 Q. Not directly from Russian into  
8 English?

9 A. It can be done. At the UN, for  
10 example, they do have Russian/English  
11 interpreters who are Russian natives. They do  
12 have it. But in Cuba, ESTI had a number of very  
13 good Russian interpreters but they were Cuban,  
14 so they would translate from Russian into  
15 Spanish and we would do Spanish into English.

16 Q. Other than the instance you just  
17 described with the television crews, have you  
18 ever seen Americans smoke Cohiba cigars?

19 A. In Cuba? Abroad?

20 Q. Let's start with in Cuba.

21 A. Other than that time, you will ask  
22 for names and I will not know the names, but  
23 like I said, and it was not an exception with  
24 Americans, probably because of the political  
25 situation between the two countries, there was

1                   Plasencia

2   more curiosity, not to say interest, in  
3   Americans to get hold of a Cohiba.

4           Q.   All right. Do you ever recall seeing  
5   anybody, any American smoking a Cohiba in Cuba  
6   other than the incident --

7           A.   Other than those people that were  
8   with me in the same room exactly?

9           Q.   Yes.

10           MR. KRINSKY: Objection.

11                   Are you asking about does she recall  
12           specific people or does she recall it  
13           happening?

14   BY MR. DOWNING:

15           Q.   Do you recall it happening?

16           A.   I do recall it happening at different  
17   times with different delegations.

18           Q.   Do you recall any of the delegations?

19           A.   For what events you mean?

20           Q.   Yes.

21           A.   No.

22           Q.   Do you recall --

23           A.   Bear in mind that this was my job and  
24   that I did this for 13 years every day.

25           Q.   Do you recall any specific American



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2 actually see Cohiba cigars on sale in Cuba?

3 A. Yes.

4 Q. Where did you see those cigars on  
5 sale?

6 A. Cigar stores, factory stores, diplo  
7 shops, more than one in the '80s, hotel stores.

8 Q. When did you first see Cohiba cigars  
9 for sale during that time period?

10 MR. KRINSKY: The time period being  
11 when she was working at ESTI?

12 MR. DOWNING: Yeah. Well, from '79  
13 and on.

14 A. All along.

15 Q. Do you recall the first time?

16 A. I can't recall the year. Late '70s,  
17 late '79, 1980. That was a turning point in my  
18 career and a time at which I moved from working  
19 with sports to working with high government  
20 authorities and visiting dignitaries, ministers  
21 of the state, important people. I spent a lot  
22 of times in the convention center. I very  
23 clearly remember Cohibas being sold at the snack  
24 bar probably from my first time in the  
25 convention center, in the snack bars where they

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2 sold the boxes, they sold them loose, they sold  
3 five cigar packs and they were there on display.  
4 And that's a very clear recollection since I  
5 started working in ESTI which -- as a result of  
6 which I visited the convention center very  
7 often.

8 Q. When was the first time you visited  
9 the convention center?

10 A. In 1979.

11 Q. Do you recall whether or not Cohibas  
12 were on sale at the convention center at that  
13 time?

14 MR. KRINSKY: Objection.

15 She just testified on that subject.  
16 She already gave you that answer.

17 A. 1979 was the Sixth Summit Conference  
18 of non-allying countries, and actually I was  
19 still an INDER employee at that time, but  
20 because this was a major event and a situation  
21 identical to 1978 where Cuba celebrated a world  
22 youth festival and because of the large number  
23 of visiting delegations, the government  
24 recruited or actually asked, called in  
25 interpreters from all the government agencies to

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2   work for -- at the festival in '78, and in '79  
3   at the summit conference.

4                   I was involved in that conference. I  
5   was working -- I was not working with a specific  
6   delegation nor in the booth. I was working in  
7   the press room, and this was the first time --  
8   actually that's when the convention center was  
9   inaugurated. So this was my first time at the  
10  convention center, a huge event, a lot of  
11  people, a lot of excitement, my first  
12  experience, I was not looking for cigars. I  
13  don't remember seeing cigars that day at the  
14  convention center.

15                  However -- maybe I should wait for  
16  another question.

17                  MR. KRINSKY: Go ahead. Finish.

18                  A. As part of the summit conference, of  
19  the Sixth Summit Conference and working in the  
20  conference in the press room, at the reception  
21  given by the government where all the  
22  delegations were invited, all the personnel that  
23  was working, definitely all the interpreters  
24  because we were badly needed, I was part of that  
25  reception, and at that reception in a private

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2   room where -- this was a huge reception and the  
3   tradition was, and I witnessed this very often,  
4   Castro walking into a large reception room and  
5   going -- moving among the people and going from  
6   groups to groups and talking to everybody, and  
7   at some point just disappearing and going into a  
8   private room, and then delegations, individual  
9   delegations, would be called in for  
10   conversations on a more personal or private  
11   ground.

12                           And during this conference, after  
13   Castro had been in the reception publicly with  
14   everybody and he went into this private room, we  
15   knew what was happening because we knew what the  
16   system was and delegations would be called in,  
17   and at one point several people were called in  
18   at the same time and I was called in as an  
19   interpreter. Again, I was not working with the  
20   delegation, I was working for the press and I  
21   was just an ambulatory, so to say, interpreter.  
22   I was called into the room where there were a  
23   number of people but a much smaller crowd than  
24   the crowd, a lot smaller and with Castro there.  
25   And it was a very informal setting. It was not

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2   a private or an important discussion, it was  
3   just a courtesy of Castro calling in some people  
4   and in a very informal manner talking to them,  
5   walking around the room, and Cohibas were passed  
6   around that night, September 1979.

7                   I can't remember the date in  
8   September, but this was September 1979, sixth  
9   non-allying conference. I was there and I was  
10   in this room when Cohibas were passed around.  
11   Coffee was served, Cohibas were passed around  
12   and there were -- they passed -- after they  
13   passed them around, the protocol, people working  
14   there passed the cigars around, they were put at  
15   coffee tables or side tables and it was just  
16   like a celebration and everybody lighting a  
17   cigar.

18                  I remember people -- and I mentioned  
19   this before, not being smokers and having a  
20   little bit of a hard time trying to light a  
21   cigar because they weren't smokers, but it was  
22   just the excitement of lighting a Cohiba that  
23   had been offered by Castro. This was a very  
24   specific time and occasion.

25                Q.   Were there any Americans in this room

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2 at the time?

3 A. I don't think so because the United  
4 States is not a member of the non-allying  
5 countries and I don't think they were there as  
6 observers. I don't think so.

7 -Q. And this was in 1979, September of  
8 1979?

9 A. Absolutely. September 1979, yes. It  
10 was at that time and after the summit conference  
11 that I was asked to work for ESTI full time.

12 Q. How do you know they were Cohiba  
13 cigars?

14 A. They were passed out as Cohibas.  
15 Castro announced that, and he was smoking  
16 himself. If they wanted to try the cigars, have  
17 you tried these cigars, they're excellent  
18 cigars. I smoke them, so they have to be good,  
19 and just joking. It was an informal gathering  
20 at a reception with a small group of people, and  
21 boxes came out and they were passed around as  
22 Cohibas.

23 Q. Were they marked Cohiba?

24 A. They were marked Cohiba.

25 Q. They were?

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2 A. Yes, the ring.

3 Q. What did the ring say? What did the  
4 ring look like?

5 MR. KRINSKY: Are you withdrawing the  
6 first question?

7 MR. DOWNING: Yes.

8 BY MR. DOWNING:

9 Q. What did the ring look like?

10 A. The ring had the name on it. This  
11 was not the ring with the image with the gold  
12 and the Indian they have now. This was an  
13 earlier ring and it said in like in yellowish  
14 bold letters, Cohiba around it, and it was the  
15 highlight of the occasion.

16 Q. Was this the first time you met  
17 Castro?

18 A. No, absolutely not. I met Castro --  
19 I didn't meet, I interpreted for Castro the  
20 first time during the world boxing, first world  
21 boxing championship in '73 or '74.

22 Q. Did you ever talk to Castro about the  
23 Cohiba cigar?

24 A. No.

25 MR. KRINSKY: Are you excluding from

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2 that her interpreting conversations with  
3 President Castro?

4 MR. DOWNING: Yes. I'll break that  
5 down.

6 BY MR. DOWNING:

7 Q. Did you ever speak personally to  
8 Castro when he talked to you about the Cohiba  
9 cigar?

10 A. No.

11 Q. Did you ever hear Castro tell anyone  
12 about the history of the Cohiba cigar?

13 A. Not the -- I don't remember the  
14 history, but I remember at that occasion in  
15 '79, which I believe was, actually was the first  
16 time that I was in the presence of Castro as an  
17 interpreter in ESTI -- I wasn't working at ESTI  
18 at that time, but this is when they called in --  
19 it was not as massive as the festival in '78.  
20 This was a more selective call of interpreters  
21 to get involved in the Sixth Summit Conference  
22 because of the magnitude of the event, and  
23 that's how I was called while still working in  
24 INDER.

25 Actually we did some training for



1                   Plasencia

2   like three months before the conference, and it  
3   was after that time, exactly after, I mean just  
4   the week after the end of the conference that I  
5   was called by ESTI officials and asked to, if I  
6   wanted to transfer and work for ESTI full time.

7                   So this was the first time that I was  
8   in the presence of Castro where Cohibas were --  
9   came up and were passed, and he talked about  
10   Cohibas and advertised sort of Cohibas among  
11   these people who were present.

12           Q.    Other than this time, did you ever  
13   hear Castro talk about Cohiba cigars?

14           A.    I can't remember an exact occasion,  
15   but he -- actually, yes. Actually, yes. I was  
16   at a meeting, this was a meeting in a small  
17   conference room in the convention center, a  
18   private -- the Cuban convention center has big  
19   meeting rooms, meeting halls. This was a small  
20   room that was in the opposite wing of the  
21   building because it was used for -- they used to  
22   call it meeting room No. 1. It was used for  
23   more private meetings, Castro or upper, higher  
24   government officials.

25                   And at this one meeting I recall very

1                   Plasencia

2   well Castro, and this was a small room but there  
3   was a long table and the booths were at one end,  
4   at one end of the room, Castro was presiding  
5   over that meeting in the opposite end and he was  
6   smoking. And this must have been very early on,  
7   '79, '80, because it was in the '80s when  
8   smoking was prohibited in public places. Not in  
9   public places. I'm sorry. At meetings and post  
10   areas in Cuba. And as part of this campaign,  
11   Castro stopped smoking in public. But he was  
12   still smoking in public then, so this must have  
13   been very early '80s, very, very early '80s, but  
14   he was smoking. During the meeting he was  
15   smoking, he had a cigar and at some point where  
16   they had a coffee break he said, "Why don't we  
17   have a coffee break, and if you want to smoke,  
18   we have Cohiba cigars." And again, he talked a  
19   little bit about Cohibas informally during the  
20   coffee break.

21           Q.    When did this take place?

22           A.    It must have been very early '80s,  
23   and the reason why I can put it in that time  
24   frame is because it was somewhere in the '80s,  
25   and not late into the '80s, when Castro stopped

1                   Plasencia  
2   smoking in public, and Cuba all together  
3   launched a campaign, and as part of the -- to  
4   endorse or support that campaign, Castro -- as  
5   part of this campaign, a nonsmoking campaign,  
6   Castro backed it up by stopping to smoke in  
7   public.

8           Q.     Did he continue to smoke in private?

9           A.     I've never been with him in private  
10   so I don't know. . . Those who were say he did, but  
11   I never saw him.

12          Q.     Were there any Americans present at  
13   this second meeting you described?

14          A.     I don't remember. I don't even  
15   remember the subject matter at that meeting. I  
16   just remember Castro very clearly at the end of  
17   the table on that side, right in front of us at  
18   the head of the table smoking cigars, but I  
19   can't remember if there were Americans.

20          Q.     Do you remember what Castro said  
21   about the Cohibas at that meeting, if anything?

22          A.     What he usually did, highlighting the  
23   quality of the cigar, it's a wonderful cigar,  
24   the fact that he smoked it, and where it was  
25   made, and where the leaves were grown, and what

1                   Plasencia  
2   part of Cuba and all that, but it's small talk.  
3   This was not a conference on cigars, okay? This  
4   was just small talk, advertising the cigar and  
5   offering cigars during the coffee break, and  
6   this was very early '80s.

7           Q.     Other than those two instances, do  
8   you recall Castro ever speaking to anyone about  
9   Cohiba cigars while in your presence?

10          A.     Not in that fashion. No, not in any  
11   way that I can mention.

12                 MR. KRINSKY: Wait. I object to the  
13   question without a definition, clarification  
14   of what you mean by speaking about. Do you  
15   mean discourse? Do you mean a comment? Do  
16   you mean offering?

17                 MR. DOWNING: Talking about Cohiba  
18   cigars.

19                 MR. KRINSKY: The objection stands.  
20   The witness is entitled to clarification.

21          A.     I've answered, I've answered this  
22   question before and I've given you an answer of  
23   the situations where it was mentioned.

24          Q.     Other than those two instances, do  
25   you remember any instance where Castro gave out

1 Plasencia

2 Q. Do you know the story behind that?

3 A. I will refrain from answering it  
4 because this is a military person and I don't  
5 think it's relevant to this case.

6 MR. DOWNING: Mr. Krinsky, I take it  
7 you're not going to allow in this type of  
8 testimony at trial.

9 MR. KRINSKY: Not on this testimony.  
10 I don't know what you mean by this type.  
11 Not on her testimony about this gift.

12 BY MR. DOWNING:

13 Q. All right. Just so it's clear, you  
14 had two instances where you saw Castro  
15 distribute Cohiba cigars.

16 A. Um-hmm.

17 Q. Yes?

18 A. Yes. I'm sorry, yes, yes.

19 Q. All right.

20 A. And may I add something else? And  
21 actually, I was -- one, one single time I was in  
22 -- the only time in my career where I was in  
23 Castro's office interpreting with a foreign  
24 visitor, Canadian official, in his office and  
25 there was a box of Cohibas. He did not discuss

1                   Plasencia  
2    it.   This was a female, he would not offer her  
3    cigars, but there was a box of Cohibas in the  
4    coffee table, which he obviously kept for  
5    himself or whatever.   Actually he was smoking  
6    himself.

7           Q.     Okay.   But he did not distribute  
8    Cohibas.

9           A.     No, no.   And this was a one single  
10   person.   This was one Canadian official I was  
11   working with and it was a female.

12          Q.     So am I correct that you had personal  
13   knowledge of two occasions where he gave cigars  
14   or distributed Cohiba cigars.

15                 MR. KRINSKY:   Object to the  
16                 characterization about personal knowledge.

17   BY MR. DOWNING:

18          Q.     All right.   You were at two events  
19   where you saw Castro distribute Cohibas.

20          A.     Absolutely, yes.

21          Q.     Other than that, you did not  
22   personally witness Castro distribute Cohiba  
23   cigars.

24          A.     No.

25          Q.     Do you have any knowledge of any

1 Plasencia

2 other event where Cuban officials other than  
3 Castro distributed Cohiba cigars?

4 MR. KRINSKY: You're excluding, I  
5 assume, the testimony about INDER?

6 MR. DOWNING: Yes. We're in the ESTI  
7 period now.

8 A. ESTI period.

9 I can't remember any other instance  
10 where other officials would give them out,  
11 although they were smoking, but no reference was  
12 made to Cohibas.

13 A lot of officials smoked who met  
14 with foreigners where I was interpreting, but  
15 Cohibas was not the issue nor offered nor  
16 brought up.

17 Q. On any of your travels with ESTI or  
18 on behalf of ESTI, do you know whether or not  
19 Cohiba cigars were taken on the trip?

20 A. Yes, they were. They were taken that  
21 I -- they always were. There was always  
22 somebody because we traveled as a group, we were  
23 a team. In all these travelings in all the  
24 countries I said I traveled to was always as a  
25 team, as part of a team. We were hired as part

1                   Plasencia

2   of a team and there was always somebody, either  
3   from the convention center, which was the other  
4   major institution that used us, either from ESTI  
5   specifically or from the convention center,  
6   there would always be somebody who would be --  
7   who would head the team who would be  
8   responsible. They're like an administrative  
9   official who would be in charge. And they  
10  always would, but I know -- by the way, Cyprus  
11  was another country I didn't mention because  
12  this happened in Cyprus.

13               The person presiding over the  
14  delegation having cigars, and there was  
15  something about our accommodation. I can't  
16  remember. Very often just because of my nature  
17  or whatever I would be dealing with  
18  administrative issues of accommodation or per  
19  diem or how do we do this, even when I was not  
20  at the head of the team, but I remember the  
21  person who was at the head of the team telling  
22  me, "I have cigars. I have Cohibas. Do you  
23  think we should give him a box of Cohibas?"  
24  Because this was something about accommodation.  
25  We wanted to offer something, so we were trying



1                   Plasencia

2   to sort of sweeten the person and she said, "I  
3   have Cohibas."

4                   And they carried Cohibas and they  
5   carried rum. This is what -- and we used to do  
6   it. It was not in my suitcase. I never carried  
7   it personally. And like I said, I traveled as a  
8   team. There was always some administrative  
9   official who would be in charge of all these  
10  little things you have to take care of when you  
11  travel with a group. This person would do that  
12  and this person would usually carry rum and  
13  cigars to give out.

14           Q.    What type of cigars?

15           A.    Cohibas. And, and --

16           Q.    Were they always Cohibas?

17           A.    I believe so, because it was  
18  something that came to symbolize Cuba sort of,  
19  and they used to carry these five cigar packs  
20  which they were easier to give away.

21           Q.    Did you ever on these travels see  
22  anyone give Cohibas away?

23           A.    I'm sure it did happen. It happened  
24  in Nicaragua. I can remember Nicaragua. I can  
25  remember it happened in Nicaragua.

1                   Plasencia

2                   This was such a common thing I'd like  
3   you to understand. This is an issue here around  
4   this table, but in the context where I worked,  
5   it was such a common thing, it was just an  
6   everyday occurrence, and at certain  
7   situations -- and it became very important  
8   because it was symbolic of Cuba, the Cuban  
9   government of Castro, and because of the  
10  curiosity that every foreigner coming to Cuba  
11  would always have for one, meeting Castro, two,  
12  buying Cohibas.

13                  It was -- and whoever had the  
14  possibility of lighting a Cohiba in the presence  
15  of Castro like was the case in this non-allied  
16  conference in 1979, it was like a ritual. This  
17  was something important for them. It was a  
18  ritual. I mean lighting a cigar, lighting a  
19  Cohiba in the presence of Castro, believe me,  
20  meant so much for those foreigners. I was  
21  there. It's symbolic, but it's...

22                  Q.    Go ahead.

23                  A.    No, that's it. It was just important  
24  to them.

25                  But the fact that you would ask me to

1                   Plasencia

2   remember on each occasion or at what occasion or  
3   in what time frame it was given, to begin with,  
4   I wouldn't keep track of it. I didn't keep  
5   track of it. It was so common. It was so  
6   unimportant for us. Very important for the  
7   person on the other end receiving it, but so  
8   unimportant for us. And so common to know you  
9   carry gifts, we're going to travel abroad, we're  
10   going to this meeting or another and we're  
11   taking cigars and rum to give out to the people  
12   who we'll meet and who will take care of us  
13   while we're there. And it was common. It was  
14   just common. When, what other occasion? This  
15   was, this was a common practice.

16           Q.     You mentioned --

17           A.     That I was present, I'm sorry, I  
18   never traveled as head of the team, because I  
19   was an active interpreter and none of the active  
20   interpreters would take care of that, I was an  
21   active interpreter; that we were always part of  
22   the reception that was given, not for us, but  
23   for the delegations that were attending whatever  
24   meeting it was, there was a reception and we  
25   were always invited as interpreters; that we

1 Plasencia

2 would go to the reception as a group, the head  
3 of the team, this administrative person, would  
4 always go with us and would carry a bottle of  
5 rum, a couple of bottle of rums, a few packs of  
6 cigars and give them away there, this was a  
7 very, very standard occurrence.

8 Q. You mentioned Nicaragua.

9 What do you recall about Nicaragua?

10 A. What do I recall? In what sense?

11 Q. Well, my question was did you ever  
12 see anyone give away Cohiba cigars on a trip.

13 A. Okay. Yes, yes. I must have gone to  
14 Nicaragua between 1973 and 1979, I don't know,  
15 20 times. We used to go very often. There were  
16 a lot of meetings in Nicaragua. Nicaragua would  
17 ask Cuba to offer the services for the meeting  
18 and Cuba always sent us. We were the team that  
19 did this job.

20 So because of the frequency with  
21 which we went to Nicaragua, I remember at  
22 receptions or parties, Nicaraguans were less  
23 formal, it wasn't a reception, sort of parties  
24 that would be given for the delegations where  
25 yes, Cohibas and rum would be given out.

1 Plasencia

2 Nicaragua?

3 MR. DOWNING: Yes.

4 A. I don't remember Americans being  
5 there.

6 Q. Other than Nicaragua, do you recall  
7 any instances where in your travels you have  
8 seen Cohiba cigars being given?

9 A. Yes, in Grenada, and they were given  
10 to Maurice Bishop, prime minister of Grenada,  
11 between 1979 and 1980 something when he was --  
12 after the coup d'etat.

13 Q. Other than Nicaragua and Grenada, do  
14 you recall actually seeing Cohiba cigars being  
15 given out on your visits?

16 MR. KRINSKY: Objection. It's been  
17 asked and answered.

18 If you're asking her whether she  
19 recalls a specific incident rather than it  
20 happening, that's a different question.

21 A. In Nicaragua, Grenada and this  
22 instance in Cyprus.

23 Q. Any others?

24 MR. KRINSKY: Again --

25 A. I don't remember.

1 Plasencia

2 A. I don't know if Cohibas were made in  
3 the factory I visited. I've only visited one  
4 cigar factory on this occasion with the  
5 delegation from Grenada, and I don't know  
6 whether Cohibas are made there, no.

7 Q. We started to talk about this a  
8 little while earlier. Do you recall the first  
9 time you actually saw Cohibas for sale at the  
10 convention center?

11 A. My recollections begin at that time,  
12 yes. That's where I have memories, very clear  
13 memories of seeing it on sale, '79 on.

14 Q. Do you recall if it was on sale, in  
15 fact, in '79?

16 MR. KRINSKY: Objection. Asked and  
17 answered.

18 You can go ahead and answer it.

19 A. I was in the convention center where I  
20 have recollections from. I was at the Sixth  
21 Summit Conference, which was a big thing, and I  
22 was looking at Cohibas or cigars at that time.  
23 I had so much more to absorb. But it was after  
24 that, immediately after that, the remaining of  
25 '79, October, November, December, that I started

1                                   Plasencia  
2   working regularly at the convention center, so  
3   it could have been any time after that,  
4   beginning in October of '79 that I saw the  
5   Cohibas.

6           Q.     Could it have been 1980?

7           A.     It could have been three months  
8   after, yes.

9           Q.     Could it have been a year after?

10          A.     Probably not that long after. It  
11   comes with my very early experiences in ESTI.

12          Q.     Do you recall the first time you saw  
13   Cohibas for sale in a hotel?

14          A.     No, not the year. I couldn't even  
15   mention the year.

16          Q.     Do you recall --

17          A.     Very early on. Very early on. I  
18   mean I have spent -- I spent the '90s, most of  
19   the '90s in the U.S., so my working experience  
20   in Cuba was within the '70s and '80s, so any  
21   reference I have was '70s and '80s, and by  
22   merely remembering that for a very long time I  
23   was seeing Cohibas on sale, it goes back a long  
24   time, from 1990 back, okay? So we must just  
25   remove the last 11 years from this, okay? So

1 Plasencia

2 Q. Are you aware of any facts that would  
3 indicate whether or not the Cuban Cohiba cigar  
4 is famous in the United States?

5 MR. KRINSKY: Objection. Objection  
6 without a definition of fame.

7 You can answer to the extent that you  
8 understand the question.

9 If you don't understand the question,  
10 ask for clarification.

11 THE WITNESS: No, I think I  
12 understand.

13 A. Whether or not -- could you explain  
14 the question? Could you be more specific,  
15 please? Yes.

16 Q. Do you know whether or not the Cuban  
17 Cohiba cigar is famous in the United States?

18 A. Are they known? What is the degree  
19 of fame that we are talking about?

20 Q. Yes. Do you have any knowledge as to  
21 the degree of fame of Cuban Cohiba cigars?

22 A. No, I don't have any knowledge as to  
23 the degree of fame, but I know that they are  
24 known among Americans, and this is 1992 on where  
25 I have worked in the United States and where I



1                   Plasencia

2   have worked or like I said before, places I have  
3   visited. And people who do not know me or are  
4   not personal friends of mine but know that I am  
5   Cuban, would engage in the kind of conversation,  
6   "Oh, Cubans, you travel often" and "Oh, do you  
7   know the Cohiba cigars? And "They're very  
8   famous and they say they're very good. Are they  
9   good?" Or whatever. But people here, and  
10   basically I should limit these comments to men.  
11   I've never discussed it with women here. I  
12   don't remember. But men asking me or making a  
13   comment about Cohibas, people whom I have worked  
14   with or come across, yes, I think they do know  
15   it, and they know that -- they associate Cohibas  
16   with Cuba.

17           Q.     How many people --

18           A.     Because they ask me as a Cuban.

19           Q.     How many people have you had these  
20   conversations with?

21           A.     Again, I can't give you numbers, but  
22   occasionally I have been asked about Cohibas.

23           Q.     Do you recall the names of any  
24   individuals with whom you've have had  
25   conversations of this nature?

1                   Plasencia

2           A.     I don't feel comfortable giving you  
3 names because I don't, I don't feel comfortable  
4 revealing names of people who are so alien to  
5 this case or to this process and who -- I don't  
6 feel comfortable giving you people's names in  
7 all honesty, and I won't do it out of ethics if  
8 for no other reason.

9                   But yes, this has happened with  
10 coworkers that I have had, absolutely.

11          Q.     In the United States.

12          A.     In the United States, yes. This is  
13 1992 to present.

14                   MR. DOWNING: Okay, Mike, same  
15 objection.

16                   MR. KRINSKY: We reserve our position.

17 BY MR. DOWNING:

18          Q.     Have you ever performed any services  
19 for a company called Habanos, S.A.?

20          A.     No.

21          Q.     Have you ever performed any services  
22 for a company called Altadis, S.A.,  
23 A-l-t-a-d-i-s?

24          A.     No.

25          Q.     Since leaving Cuba, have you

1                   Plasencia

2 performed any services for any entity of the  
3 Cuban government?

4           A.     In the U.S.?

5           Q.     Yes.

6           A.     No, not at all.

7           Q.     How about outside of the U.S.?

8           A.     No. This is where I've been living  
9 for the last ten years.

10          Q.     Are you being paid for your testimony  
11 here today?

12          A.     No.

13          Q.     Have you done any work with  
14 Mr. Krinsky or his law firm since the time that  
15 you talked about when you first met Mr. Krinsky?

16          A.     No. It was only that one time he  
17 hired me for Mrs. Ana Lopez's testimony.

18          Q.     Are you currently scheduled to  
19 perform any more work for Mr. Krinsky or his law  
20 firm?

21          A.     No, I'm not.

22          Q.     Did you ever meet a woman by the name  
23 of Celia Sanchez?

24          A.     Celia Sanchez, the woman who was  
25 engaged in the struggle before 1959, in the

## C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

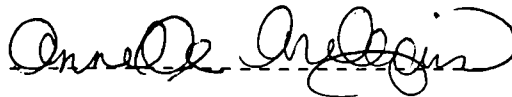
COUNTY OF NEW YORK )

I, ANNETTE ARLEQUIN, a Shorthand  
Reporter and Notary Public within and for  
the State of New York, do hereby certify:

That ROSALIE PLASENCIA, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the  
testimony given by the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 7th day of October, 2001.



ANNETTE ARLEQUIN, CSR, RPR

My commission expires:

6/30/02

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ROSALIE PLASENCIA

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6

Subscribed and sworn to before me

7

this \_\_\_\_ day of \_\_\_\_\_, 2001.

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6 NAME OF CASE: CUBATABACO v. GENERAL CIGAR  
7 DATE OF DEPOSITION: SEPTEMBER 21, 2001  
8 WITNESS: ROSALIE PLASENCIA  
9

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\_\_\_\_\_  
ROSALIE PLASENCIA

23 Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2001.

24 \_\_\_\_\_

25 (Notary Public) My Commission Expires:

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## ----- I N D E X -----

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ROSALIE PLASENCIA MR. DOWNING

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7th 120:22 70 23:13 70s 19:19,25 20:2,8,14 20:22 45:3 64:16 93:20,21 73 26:19 70:21 74 26:18 70:21 740 3:8 76 23:13 28:4 77 23:12,14 78 23:13,14 28:4 41:17 42:15,25 44:15 66:2 71:19 79 42:15 64:12,17 66:2 71:15 73:7 86:15,16 86:17,19 89:22 92:13 92:15,25 93:4				
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20 24:14 85:15 2001 1:18 2:2 120:22 21 1:18 24 90:3 27 2:2				
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<b>3</b>				

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

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EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
-----	X	

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition  
Transcript of John Rano, dated May 23, 2000**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVue Nos. 138, 136, 135, 132, 91 and 89.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

EMPRESA CUBANA DEL TABACO, d.b.a.  
CUBATABACO,

Plaintiff,

vs.

CULBRO CORPORATION and GENERAL CIGAR  
CO., INC.,

Defendant.

ORIGINAL

No.

97Civ.8399

(RWS)

DEPOSITION OF JOHN RANO

New York, New York

Tuesday, May 23, 2000

Reported by:

PAMELA J. MAZZELLA, RPR

JOB NO. 108423



ESQUIRE<sup>TM</sup>  
DEPOSITION SERVICES

216 East 45th Street, 8th Floor  
New York, NY 10017-3304  
212.687.8010 • 800.662.3287  
Fax 212.557.5972

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May 23, 2000

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9:45 a.m.

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Deposition of JOHN RANO, held  
at the offices of Rabinowitz, Boudin,  
Standard, Krinsky & Lieberman, P.C.,  
740 Broadway at Astoria Place, New York,  
New York, pursuant to Notice, before Pamela  
J. Mazzella, a Registered Professional  
Reporter and Notary Public of the State of  
New York.

1

2

3 A P P E A R A N C E S :

4 RABINOWITZ, BOUDIN, STANDARD, KRINSKY &  
5 LIEBERMAN, P.C.

6

Attorneys for Plaintiff

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New York, New York 10003-9518

10

BY: DAVID B. GOLDSTEIN, ESQ.

11

12

MORGAN &amp; FINNEGAN, LLP

13

Attorneys for Defendants

14

345 Park Avenue

15

New York, New York 10154-0053

16

BY: JANET DORE, ESQ.

17

18

19

ALSO PRESENT:

20

A. ROSS WOLLEN,  
General Cigar Holdings Inc.  
(partial)

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IT IS HEREBY STIPULATED AND AGREED, by  
and between the attorneys for the respective  
parties herein, that filing and sealing be and  
the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that  
all objections, except as to the form of the  
question, shall be reserved to the time of the  
trial.

IT IS FURTHER STIPULATED AND AGREED that  
the within deposition may be sworn to and  
signed before any officer authorized to  
administer an oath, with the same force and  
effect as if signed and sworn to before the  
Court.

1

2 J O H N R A N O, called as a witness, having  
3 been duly sworn by the Notary Public, was examined  
4 and testified as follows:

5

6 EXAMINATION CONDUCTED

7 BY MR. GOLDSTEIN:

8 Q. Would you please state your name and  
9 address for the record.

10 A. John Rano, 1601 Third Avenue, New  
11 York, New York.

12 Q. And where are you currently employed?

13 A. I am self-employed.

14 Q. And where, what's the business or  
15 the --

16 A. The apparel business, I'm working  
17 with somebody in the apparel business.

18 Q. And is it a company that has a name?

19 A. The company does have a name, it is  
20 called V-E-N-A-N-Z-I, Venanzi International.

21 Q. And where is that located?

22 A. Connecticut.

23 Q. And when did you stop working for  
24 General Cigar?

25 A. June 21, 1999, I believe.



1 Rano

2 Q. But that you may have seen, you are  
3 just not certain?

4 A. Possibly.

5 Q. Did you review any invoices or other  
6 sales records of sales of cigars?

7 A. One document that was written on an  
8 invoice, but it was not an invoice per se.

9 Q. When did you start working for  
10 General Cigar?

11 A. 1984.

12 Q. And were you there continuously from  
13 1984 to 1999?

14 A. Yes, I was.

15 Q. Do you recall in the fall of 1997  
16 litigation with, between General Cigar and this  
17 company called G.D.M.?

18 A. Very vaguely. I might have heard  
19 something about it.

20 Q. And do you recall that about that  
21 same time in November of 1997 Cubatabaco initiated  
22 a lawsuit against General Cigar?

23 A. Yes, I had heard that.

24 Q. Do you recall at about that time  
25 being asked to collect documents related to

1 Rano

2 A. For part of the time I was just  
3 unemployed.

4 Q. But you didn't have any other work  
5 positions other than --

6 A. No.

7 Q. And I take it that what you are  
8 currently doing now has nothing to do with the  
9 cigar industry?

10 A. That's correct.

11 Q. Why did you leave in June of 1999?

12 A. I resigned.

13 Q. Was there a reason you resigned at  
14 that time?

15 A. Policy dispute.

16 Q. With whom?

17 A. With senior management.

18 Q. When you came to the company, and  
19 I'll call it -- were you employed by General Cigar  
20 when you came in 1984?

21 A. Yes, I was.

22 Q. When you came to the company in 1984  
23 what was your job title?

24 A. National field sales development  
25 manager.

1 Rano

2 Q. And to the best of your recollection,  
3 if you could just walk through your changes in  
4 titles and the dates to the best of your ability  
5 during the time period that you were at General  
6 Cigar.

7 A. I had that, held that position, these  
8 are rough dates now, I have held that position I  
9 believe through 1989, somewhere in there, during  
10 that period.

11 About 198 -- 1989 perhaps I was, also  
12 took on the responsibility of marketing manager  
13 for premium cigars.

14 In 1990 or '91 I became vice  
15 president of marketing.

16 In '94 or '95, and these are real  
17 rough dates, I became senior vice president of  
18 marketing.

19 1998 I became senior vice president  
20 of sales, president of General Cigar  
21 International.

22 Q. That's the position you held when you  
23 resigned?

24 A. That's correct.

25 Q. In 1990 or '91 when you became vice

1 Rano

2 president of marketing, did you become an officer  
3 of the company?

4 A. I'm not sure if I was an officer or  
5 not.

6 Q. At any point did you become aware  
7 that you were an officer of the company?

8 A. I did -- yes, I did.

9 Q. And do you know about when that was?  
10 Was that when you became vice president of  
11 marketing or was it some other time?

12 A. I think it was before that.

13 Q. And when I say "the company," I  
14 probably should ask which company.

15 A. It was General Cigar. I should  
16 clarify that. It was General Cigar Company not as  
17 it exists today, because I was never an officer of  
18 the company.

19 Q. You were never an officer of Culbro?

20 A. That's correct.

21 Q. And you were never an officer of  
22 General Cigar Holdings Inc.?

23 A. That's correct.

24 Q. And you remained an officer until you  
25 left the company?

1 Rano

2 A. To the best of my knowledge.

3 Q. And you were never a member of the  
4 board of directors at that time?

5 A. No, I wasn't.

6 Q. Prior to 19 -- what were you doing  
7 before you came to General Cigar?

8 A. I was with a company called Mighty  
9 Mac. M-I-G-H-T-Y, Mighty Mac.

10 Q. And what was that company?

11 A. That was apparel.

12 Q. And how long were you there?

13 A. Two years.

14 Q. And before that?

15 A. Alfred Dunhill.

16 Q. What years were you there?

17 A. Back up four years.

18 Q. Something like '78 to '82, something  
19 like that?

20 A. Something like that.

21 Q. And what did you do for Alfred  
22 Dunhill?

23 A. I was merchandise manager for their  
24 wholesale division.

25 Q. And did that include cigars?

1 Rano

2 A. The wholesale division included  
3 cigars. I wasn't at that time very involved in  
4 that part of the business though.

5 Q. And did that include their entire  
6 line of merchandise?

7 A. Wholesale products, yes.

8 Q. And at that time did you have any  
9 dealings with General Cigar that you recall?

10 A. I didn't deal with General Cigar at  
11 that time.

12 Q. I'm going to force you backwards a  
13 little bit, we'll get you back to college.

14 What did you do prior to Alfred  
15 Dunhill?

16 A. I worked for the David P. Ehrlich  
17 Company.

18 Q. What did that involve?

19 A. I was the vice president of -- I  
20 don't know what the hell I was vice president of.  
21 Vice president of merchandising, I guess.

22 Q. And what did they sell?

23 A. We were the pipe and tobacco and  
24 cigar business, retail.

25 Q. This was a retail store?

1 Rano

2 A. Yes, it was.

3 Q. And what were the stores called?

4 A. David P. Ehrlich, E-H-R-L-I-C-H.

5 Q. Are they still in business?

6 A. Yes.

7 Q. And were they a seller of high end  
8 premium cigars or all cigars?

9 A. All cigars.

10 Q. And what years were you at that  
11 company?

12 A. Part time from '74 I guess until I  
13 went to Dunhill.

14 Q. And your responsibilities as vice  
15 president of merchandising?

16 A. Was mostly buying.

17 Q. So you would be buying from the  
18 manufacturers?

19 A. Correct.

20 Q. So at that time were you dealing with  
21 General Cigar?

22 A. Yes.

23 Q. And do you recall who you were  
24 dealing with at General Cigar?

25 A. Yes.

1 Rano

2 Q. Who was that?

3 A. Robert Lillienfield and Frank Fina.

4 Q. Do you recall ever buying Cohiba  
5 cigars from General Cigar for David P. Ehrlich?

6 A. Never did.

7 Q. Do you recall buying Cohiba -- I  
8 guess you wouldn't have been buying, but do you  
9 recall Alfred Dunhill buying Cohiba cigars from  
10 General Cigar at the time you were at Alfred  
11 Dunhill?

12 A. No.

13 Q. While you were at either of those two  
14 companies were you aware of General Cigar's Cohiba  
15 cigar?

16 A. No.

17 Q. Prior to David Ehrlich what did you  
18 do?

19 A. I was at Boston University.

20 Q. And when did you graduate?

21 A. 1975.

22 Q. And from there you went to David  
23 Ehrlich?

24 A. Correct.

25 Q. And were you working in the city, in



1 Rano

2 Q. And do you know where he is today?

3 A. He's retired. I'm not sure where  
4 he's living.

5 Q. Did you have any involvement in the  
6 premium brands during this period approximately  
7 1984 to 1989 when you were national sales field  
8 development manager?

9 A. No.

10 Q. Were you aware at that time of the  
11 volume of sales of the premium brands?

12 A. I would have been exposed to that.

13 Q. But it was not your responsibility?

14 A. No.

15 Q. When did you first learn of General  
16 Cigar's Cohiba cigar?

17 A. Learn about it in which way?

18 Q. When did you first hear that there  
19 was a General Cigar Cohiba?

20 A. I never did hear that there was one,  
21 I happened to see it in the marketplace.

22 Q. Where did you see it in the  
23 marketplace?

24 A. In different retail accounts.

25 Q. Do you recall when?

1 Rano

2 at that time.

3 Q. Were you aware of any advertising or  
4 promotion done by the retail stores for the  
5 General Cigar Cohiba?

6 MS. DORE: Are you talking about the  
7 same period of time?

8 MR. GOLDSTEIN: Yes, same period,  
9 prior to the change in job position.

10 A. I'm not aware of any.

11 Q. Do you recall any conversations you  
12 might have had either within the company or with  
13 retailers, about General Cigar's Cohiba during  
14 this time period?

15 A. Same time period?

16 Q. Yes.

17 A. No.

18 Q. Do you know when General Cigar first  
19 began to sell the Cohiba, its Cohiba?

20 A. The first dates, no.

21 Q. So the first awareness you had was  
22 '84?

23 A. When I joined the company.

24 Q. If I asked you what they did before  
25 '84, you wouldn't have any knowledge of that?

1 Rano

2 A. No.

3 Q. In 1989, and I don't want to pin you  
4 to a date, but you believe it was 1989 or fairly  
5 certain it was 1989?

6 A. I think that is when it was.

7 Q. You became the marketing manager for  
8 premium cigars?

9 A. Correct.

10 Q. Did you take Mr. Lillienfield's  
11 position?

12 A. No.

13 Q. Was he still at the company?

14 A. Yes.

15 Q. Did you report to him?

16 A. No.

17 Q. Who did you report to?

18 A. I reported to two people, Mr. Frank

19 Fina--

20 Q. That's F-I-N-A?

21 A. Yes. And Mr. Michael Kowalsky.

22 Q. Are either of them still with the  
23 company?

24 A. No.

25 Q. Do you know where either of them are?

1 Rano

2 A. Mr. Fina I believe is with Nat  
3 Sherman.

4 Q. And Mr. Kowalsky?

5 A. I have no idea.

6 Q. If I were to ask you who would have  
7 the best knowledge at General Cigar, whether  
8 they're still there or not, of Cohiba sales from  
9 1978 to 1989, who would that be?

10 A. I couldn't give you a real good  
11 answer.

12 Q. Would it be Mr. Lillienfield's  
13 responsibility or Mr. Fina's responsibility?

14 A. It would probably be Mr. Lillienfield  
15 more than Mr. Fina.

16 Q. Do you know if there is someone at  
17 the company today who as part of his job, his or  
18 her job responsibilities would have knowledge of  
19 sales in that earlier time period?

20 A. No.

21 Q. When you had this new job title in or  
22 about 1989 how did your job responsibilities  
23 change?

24 A. I took on the responsibility of  
25 marketing for General Cigar's premium cigar

1 Rano

2 brands.

3 Q. And what work did that entail?

4 A. Pricing, promotions, advertising, new  
5 products.

6 Q. Were you responsible for, in charge  
7 of sales and sales volumes and things like that,  
8 keeping the records of sales?

9 A. No.

10 Q. Was that a separate department or was  
11 that someone within your group?

12 A. No, that was a separate function  
13 totally.

14 Q. So it wouldn't have been their group  
15 that would have done sales reporting or annual  
16 reports or monthly reports, or things like that?

17 A. No.

18 Q. Do you have any knowledge during the  
19 time period that you were at General Cigar, of  
20 documents being lost or destroyed, say, due to  
21 accident or natural disaster or anything like  
22 that?

23 A. None that I know of.

24 Q. When you became marketing manager for  
25 premium cigars, which premium cigars was General

1 Rano

2 A. No.

3 Q. Do you recall -- you say your  
4 responsibility included pricing, promotions and  
5 advertising new products while you were marketing  
6 manager for premium cigars?

7 A. Yes.

8 Q. Do you recall doing any work with  
9 pricing of Cohibas from 1989 to when you began to  
10 sell to Mike's and Alfred Dunhill?

11 A. I would imagine at that time we would  
12 be working on the Cohiba that we would be selling  
13 to Dunhill and to Mike's.

14 Q. When you say you would imagine, do  
15 you have any recollection of working on it?

16 A. The only recollection I would have is  
17 that it would fit the timeframe for startup,  
18 for -- to make sure you had all of your ducks in a  
19 row for the lead.

20 Q. You would need five years?

21 A. In some cases you would need at least  
22 that.

23 Q. Do you yourself sitting here have a  
24 recollection of anything done regarding the  
25 General Cigar Cohiba for the period 1988 up to

1 Rano

2 when you began to sell to Mike's and Alfred  
3 Dunhill?

4 A. Yes.

5 Q. What do you recall doing?

6 A. We started to develop packaging  
7 designs.

8 Q. And do you recall when you began to  
9 do that?

10 A. Perhaps sometime in 1990.

11 Q. Are you aware that General Cigar  
12 applied to register the Cohiba mark and the block  
13 lettering in December of 1992?

14 A. I'm not sure I understand the  
15 question.

16 Q. Are you aware that General Cigar made  
17 an application to the U.S. trademark office  
18 regarding its Cohiba in December of 1992?

19 A. I couldn't be specific on that date.

20 Q. Well, if I told you it was December  
21 of 1992, does that in any way help you to  
22 determine the time when you began to work on  
23 packaging designs?

24 A. No, because that would have been  
25 independent of the other at that time.

1 Rano

2 Q. Do you recall who worked on  
3 developing the packaging designs?

4 A. We had an outside package design  
5 person.

6 Q. Do you know who that was?

7 A. Yes, Cliff Backner.

8 Q. Cliff?

9 A. Backner, B-A-C-K-N-E-R, I believe.

10 Q. Is that person in the city?

11 A. Yes.

12 Q. Do you recall where?

13 A. Yes, 25th Street. I forget between  
14 what avenues.

15 Q. And did Mr. Backner create any  
16 documents including designs or proposed designs?

17 A. Yes.

18 Q. And were they sent to General Cigar?

19 A. Yes.

20 Q. And do you know where they went after  
21 they came to General Cigar?

22 A. Initially they would have come to me.

23 Q. And do you recall what you did with  
24 them?

25 A. I would review them, I would review



1 Rano

2 them with the other people involved in the project  
3 and then make revisions, get rid of them because  
4 they were of no use, file them, whatever was  
5 necessary for the next steps.

6 Q. Do you recall whether you destroyed  
7 everything that related to this 1990 packaging?

8 A. No, I didn't.

9 Q. Do you know where --

10 A. I don't know. Today are you asking  
11 me?

12 Q. No, not where it is today, but where  
13 it went from, those things that you didn't  
14 destroy, do you know where you put them?

15 A. They would have been in a file.

16 Q. In your office?

17 A. Again I don't believe it would have  
18 been necessarily in my office because someone was  
19 filing them. It was in my office or adjacent to  
20 my office, or wherever.

21 Q. Do you have any recollection of those  
22 documents being destroyed at any time?

23 A. No.

24 Q. Going to a warehouse or a storage  
25 facility?

1 Rano

2 A. Possibly that at the end of a year we  
3 would rotate our files around.

4 Q. Were you the person at General Cigar  
5 responsible for the packaging change?

6 A. I was one of the people leading it,  
7 yes.

8 Q. And who else was involved?

9 A. Certainly the outside package  
10 designer. I would initiate it, but all packaging  
11 had to be approved by senior management, by legal.

12 Q. At that time was Mr. Wollen in charge  
13 of legal, the head of legal?

14 A. Yes.

15 Q. And do you know if he is the person  
16 who approved it from legal, or was it a  
17 subordinate of his?

18 A. It could have been a subordinate. I  
19 don't recall.

20 Q. And do you recall whether Mr.  
21 Cullman, Jr. had to approve the packaging?

22 A. He did.

23 Q. And Cullman, Sr.?

24 A. He would have approved it also.

25 Q. Who was the president at that time of

1 Rano

2 General Cigar?

3 A. What is the date?

4 Q. You gave me '90, but I don't know  
5 when it got approved so we are going to go to  
6 that.

7 A. David Burg.

8 Q. Would he have approved it?

9 A. Certainly would have given his  
10 blessing to it before it went up.

11 Q. Do you recall when the packaging was  
12 approved.

13 A. It was an ongoing process until we  
14 finally decided how we wanted to proceed.

15 Q. And do you recall when it was finally  
16 approved?

17 A. It would have been finally approved  
18 before we shipped it to Dunhill, some time before  
19 that because you have to produce it and so forth.

20 Q. Do you recall about how long this  
21 process lasted?

22 A. The process was ongoing for years.  
23 It almost never stopped.

24 Q. The first invoice I have, I'm not  
25 saying when you began to sell to Dunhill, but the

1 Rano

2 first invoice I have shipping to Dunhill is  
3 November of 1992. And you say the packaging  
4 redesign you believe began in 1990.

5 Do you have any, did those dates give  
6 you any, help refresh your recollection of how  
7 long you went before you began to, before you  
8 finalized the project from start to finish?

9 A. What project are you talking about,  
10 sir?

11 Q. The redesign of the Cohiba package.

12 A. There was a number of iterations, so  
13 I have to know which one you're speaking of, then  
14 I can perhaps answer your question better.

15 Q. It might help if we take a look at  
16 what I'm thinking of and if I'm thinking of  
17 something different than you are thinking of, that  
18 might help us.

19 Let me show you what was previously  
20 marked as Plaintiff's Exhibit 13 and also  
21 Plaintiff's Exhibit 28 in the green stamp, and it  
22 is my understanding that this was the packaging  
23 for the Cohiba during the 1980s time period. And  
24 you can take a look at that, and that is several  
25 pages.

1 Rano

2 A. This was the Cohiba from the  
3 earliest, from the earliest times. It was done  
4 before my time. However, this was the product  
5 that was in the marketplace during my time.

6 Q. This was a product that was in the  
7 marketplace when you said you saw them in the  
8 retail stores '84, '85, those years?

9 A. That's correct.

10 Q. And that is Exhibit 13 and 28,  
11 Plaintiff's Exhibits 13 and 28; is that correct?

12 A. That's correct. Although I must tell  
13 you one is green and one is yellow.

14 Q. Right, that was just two days of  
15 deposition.

16 Let me show you what was previously  
17 marked as Plaintiff's Exhibit 14 and Plaintiff's  
18 Exhibit 29, which are black and white copies, and  
19 ask you focusing on the pictures, whether that's  
20 the Cohiba box, the redesign package. I know some  
21 of the copies are pretty terrible.

22 A. The best I can determine from what  
23 I'm looking at because they are not original here,  
24 is the answer is yes.

25 Q. Let me take 10 seconds and bring in a

1 Rano

2 yesterday, I didn't get to any mail that  
3 came in late in the day.

4 MR. GOLDSTEIN: It was delivered to  
5 you, I know it was after 3:00, it may have  
6 been closer to 5:00.

7 MS. DORE: That's probably why I  
8 didn't see it. I'm sure it is there  
9 somewhere.

10 MR. GOLDSTEIN: We can take a couple  
11 of minutes at this time and you can take a  
12 look at the box and the note.

13 MS. DORE: I'll do it during the  
14 normal break.

15 MR. GOLDSTEIN: Sure. And my  
16 representation is that Plaintiff's Exhibit  
17 42 are photocopies or photo xeroxes of the  
18 box that is on the table, that I described  
19 in my letter to you yesterday.

20 BY MR. GOLDSTEIN:

21 Q. It's your recollection that the box  
22 and the pictures of the box in front of you is the  
23 redesigned General Cigar Cohiba box from the 1990  
24 to 1992 time period?

25 A. I'm not quite sure what you mean by

1 Rano

2 "redesigned."

3 Q. Well, the change -- the change of the  
4 design from Plaintiff's Exhibit 13 and Plaintiff's  
5 Exhibit 28 to what was then sold to Dunhill and  
6 Mike's?

7 A. That's correct.

8 Q. And are you aware of any other  
9 packages other than this one and the earlier one,  
10 the one in Plaintiff's Exhibit 42 and the earlier  
11 one we talked about during this time period, from  
12 any time in the 1980s through the mid-1990s?

13 A. Could you state that question again  
14 for me, please.

15 Q. It was not a good question.

16 Are you aware of any other packaging  
17 of the Cohiba, General Cigar Cohiba, other than  
18 the two that have been put on the table in front  
19 of you, prior to 1997?

20 A. I understand that. The question as  
21 you phrased it I can't answer.

22 Q. Why is that?

23 A. Because I don't know if you are  
24 talking about finished packaging.

25 Q. I am talking about finished --

1 Rano

2 A. Or iterations of.

3 Q. You should ask me to clarify. I  
4 meant finished packaging that was presented in the  
5 marketplace.

6 A. Could you just repeat the question  
7 one more time for me, please.

8 Q. Are you aware of any other packaging  
9 of General Cigar's Cohiba in the retail stores,  
10 other than the two designs that have been put on  
11 the table in front of you?

12 MS. DORE: You want to add in a time  
13 period there?

14 Q. Prior to 1997.

15 A. I believe I understand it. I believe  
16 the answer is those are the only two.

17 Q. Do you remember whether preliminary  
18 boxes, you know, wood boxes were created by  
19 General Cigar or by its design people that did not  
20 make it into the marketplace, toolboxes as opposed  
21 to drawings?

22 A. Same time period?

23 Q. Yes. Let me call it the redesign or  
24 repackaging unless you have some objection to that  
25 word, that you have been talking about starting



1 Rano

2 sometime about 1990 General Cigar changed the  
3 packaging or began a process of changing the  
4 packaging, and I'm asking questions about that  
5 until this finished product, the 1992, the Exhibit  
6 42 became part of the --

7 A. I'm not trying to be difficult, but I  
8 do have an objection. I'm not the attorney, but I  
9 do, and the reason is it is going to lead me into  
10 problems further down the line I believe.

11 Is everything I say on the record by  
12 the way?

13 Q. Right now it is.

14 A. Okay.

15 MS. DORE: Wait a second. Is there  
16 a question pending?

17 MR. GOLDSTEIN: I thought so.

18 MS. DORE: Let me hear the question.

19 (Record read.)

20 MS. DORE: I don't know what the  
21 question is.

22 MR. GOLDSTEIN: Off the record.

23 (Discussion off the record.)

24 BY MR. GOLDSTEIN:

25 Q. During the time period from 1990 to

1 Rano

2 1992 were any boxes created, General Cigar Cohiba  
3 boxes created, that were different than what wound  
4 up in the marketplace as Plaintiff's Exhibit 42?

5 A. I understand the question, I'm just  
6 going back in time. I do not recollect any.

7 Q. Were full color sketches or full  
8 color drawings created at any time between 1990  
9 and 1992 regarding a new design for General  
10 Cigar's Cohiba?

11 A. Yes, there were.

12 Q. And were any of those different than  
13 what finally entered the marketplace? In other  
14 words, were there preliminary drawings or  
15 preliminary pictures that, different than what  
16 finally became part of the market?

17 A. Yes.

18 Q. Did you participate in what the box  
19 would look like?

20 A. Yes, I did.

21 Q. And prior to the final approval by  
22 senior management, who else other than the design  
23 person participated in what the box would look  
24 like?

25 A. I would say certainly the president

1 Rano

2 when boxes are displayed they are stacked up on  
3 top of each other and nobody would see anything.  
4 So when they buy it they would turn it over and  
5 see Santiago, and if it is sold individually they  
6 would see it when they are buying the cigar.

7 Q. When you said it was a legal reason,  
8 there was a requirement that it shows the place of  
9 origin?

10 A. Yes.

11 Q. Do you know why it wasn't put on the  
12 sides, like the face, the front?

13 A. Traditionally it never is.

14 Q. Has it traditionally also not been on  
15 the top?

16 A. It all depends on the graphics.

17 Q. Do you know who made the decision to  
18 use that particular typeface for Cohiba?

19 A. I would say it was approved all the  
20 way up the line. It came back to us probably from  
21 the package creator and then it was approved by  
22 everybody.

23 Q. Do you remember having any  
24 discussions about choosing that typeface?

25 A. To the degree that we wanted a block

1 Rano

2 typeface.

3 Q. Do you know why you wanted a block

4 typeface?

5 A. The boldness of it.

6 Q. Do you recall any discussions about

7 whether it did or didn't look like the Cuban

8 Cohiba typeface?

9 A. I don't recall any discussions about  
10 it.

11 Q. Do you recall at any time comparing  
12 it to the Cuban Cohiba typeface?

13 A. Specifically, no.

14 Q. Generally?

15 A. More than likely.

16 Q. Do you recall what you, whether you  
17 had any reaction about whether it was similar or  
18 dissimilar to the Cuban Cohiba typeface?

19 A. No.

20 Q. Do you recall giving any instructions  
21 to the designer that the box, the lettering should  
22 or should not look like the Cuban Cohiba typeface?

23 A. We gave him instructions to come up  
24 with different alternatives, different  
25 suggestions.

1 Rano

2 Q. Did all of his suggestions have this  
3 plain block lettering?

4 A. With regards just to the lettering,  
5 it was all block lettering.

6 Q. Do you know if the design person was  
7 aware of the Cuban Cohiba design, Cuban Cohiba  
8 logo?

9 A. I believe he was.

10 Q. Do you know how he was aware?

11 A. I believe we gave him a five-pack  
12 package of the cigars, the empty box, a five pack,  
13 if memory serves me correct.

14 Q. Why did you do that?

15 A. So he had, A, a frame of reference;  
16 and, B, there were elements on that that we  
17 couldn't use.

18 Q. When you say "frame of reference,"  
19 what do you mean by that?

20 A. Just so he knew what it looked like,  
21 et cetera, and mostly because there were two  
22 elements on the packaging that we could, we were  
23 restricted from using.

24 Q. And which two elements were those?

25 A. The Indian head and the check.

1 Rano

2 Q. Like a checkerboard?

3 A. Yes.

4 Q. Why were you restricted from using  
5 those two elements?

6 A. It was my understanding that that was  
7 a specific trade dress and we didn't have the  
8 rights to that trade dress.

9 Q. And where did you get that  
10 understanding from?

11 A. From our, from legal.

12 DI Q. And what did they tell you?

13 MS. DORE: Don't go into any  
14 discussions with counsel, that includes  
15 in-house counsel at General Cigar while you  
16 were there.

17 MR. GOLDSTEIN: And you're  
18 instructing the witness not to answer?

19 MS. DORE: That's correct.

20 Q. You had discussions with counsel  
21 regarding what elements you could and could not  
22 use on the box?

23 MS. DORE: You can answer yes or no  
24 as to whether you had discussions, without  
25 disclosing the substance of the

1 Rano

2 discussions.

3 A. Yes.

4 Q. And as a result of those discussions  
5 you concluded that you could not use the  
6 checkerboard or the Indian head from the Cuban  
7 Cohiba box; is that correct?

8 MS. DORE: You can answer that yes  
9 or no.

10 A. Yes.

11 Q. And as a result of that discussion  
12 you concluded that it was okay to use the block  
13 lettering?

14 A. Yes.

15 Q. Did you have discussions with counsel  
16 over whether or not it was okay to use the block  
17 lettering?

18 MS. DORE: Answer again yes or no  
19 without disclosing the substance.

20 A. I'd say yes.

21 Q. To the best of your recollection you  
22 cannot recall any discussions with a design person  
23 regarding the packaging of the Cuban Cohiba, other  
24 than to tell him he couldn't use those two  
25 elements?

1 Rano

2 A. The instructions were that those two  
3 elements couldn't be used and he was to come up  
4 with his own variations for new packaging.

5 Q. Do you recall approximately how many  
6 variations he came up with?

7 A. In what timeframe, sir?

8 Q. In the timeframe from 1990 until  
9 Plaintiff's Exhibit 42 was finalized and approved.

10 A. Many. I can't give you a definitive  
11 number, but there were many.

12 Q. And were any brought to senior  
13 management and rejected?

14 A. Yes.

15 Q. Do you recall about how many went  
16 through that process?

17 A. To this time, in this timeframe?

18 Q. Yes.

19 A. All of them.

20 Q. I guess an inartful question, but the  
21 way I should have asked it was did you reject any  
22 of those prior to them getting up to senior  
23 management?

24 A. No.

25 Q. So basically all of his designs were



1 Rano

2 passed to senior management?

3 A. That's correct.

4 Q. And are you aware of whether any were  
5 rejected for legal reasons?

6 A. I don't recall specifically.

7 Q. And again I may be repeating myself,  
8 but when you left the company you don't know where  
9 these various drafts are, if they exist?

10 A. Drafts, you mean --

11 Q. These preliminary designs.

12 A. No, I don't know where they are now.

13 Q. And you didn't know where they were  
14 when you left the company?

15 A. They would be, they would have either  
16 been in storage or certainly in files that were  
17 kept for me.

18 Q. Would the company have created  
19 records regarding the payment to the design  
20 person?

21 A. Yes.

22 Q. Do you know what the company's policy  
23 was and is in terms of how long it would keep  
24 those documents?

25 A. I don't.

1 Rano

2 Q. Do you have any idea how much money  
3 the company spent, how much money the company paid  
4 to the design person?

5 A. In what timeframe?

6 Q. From the time you retained Mr.

7 Backner --

8 A. Yes.

9 Q. -- until this package was approved.

10 A. Many thousands of dollars.

11 Q. When did you --

12 MS. DORE: Are you sort of shifting  
13 gears right now?

14 MR. GOLDSTEIN: Yes. Do you need to  
15 take a break?

16 MS. DORE: Yes, I need to call my  
17 office about one thing, okay?

18 MR. GOLDSTEIN: Sure.

19 (Recess taken.)

20 BY MR. GOLDSTEIN:

21 Q. Do you know why there was a decision  
22 made to put Cohiba, the lettering in the lower  
23 right-hand corner on the cover?

24 A. Yes. We wanted to make this box, we  
25 knew it was an interim box and we wanted to do it

1 Rano

2 so it was least, the least obvious, just the least  
3 obvious.

4 Q. What do you mean by that, by "least  
5 obvious"?

6 A. Traditionally it would go centered  
7 somewhere, but we knew this was an interim product  
8 and an interim box and we didn't want it to stand  
9 out and be bold to the consumer, that is why we  
10 did it that way.

11 Q. Why would you not -- why would you  
12 not want it to stand out and be bold to the  
13 consumer?

14 A. We knew it was an interim product and  
15 package.

16 Q. And that would make you want it to  
17 not stand out?

18 A. Correct. In other words, we didn't  
19 want it to necessarily stay registered in people's  
20 minds for a long period of time.

21 Q. The decision that this would be an  
22 interim presentation, did that have anything to do  
23 with the Cuban Cohiba to your knowledge?

24 A. No, it didn't.

25 Q. But you would say it would be more

1 Rano

2 usual for a cigar box to have the name in the  
3 middle; is that correct?

4 A. Depending on the graphics, but  
5 somewhere, yes.

6 Q. I'm going to show you what has been  
7 previously marked as Plaintiff's Exhibit 4, it's a  
8 black and white copy of a cigar box top.

9 Do you know what that is?

10 A. I would assume it is one of two  
11 things, either a counterfeit, and I have no way of  
12 telling from the photograph, or it's a, it would  
13 be a box of Cuban Cohibas, but I have no way of  
14 telling that.

15 Q. You can't tell whether it is a  
16 counterfeit of a Cuban Cohiba or not?

17 A. That's correct.

18 Q. But that is in fact what the  
19 legitimate Cuban Cohiba looks like; is that  
20 correct?

21 A. In one of its variations, yes.

22 Q. And that variation was in the market  
23 in the 1990 to 1992 period; is that correct?

24 A. That I'm not sure of. The one before  
25 that was what I remember as a wrap set package,

1 Rano

2 which had a paper set over the box.

3 Q. Let me go into my storeroom. I'll  
4 represent to you that this is a Cohiba box from  
5 our, from Cubatabaco in Cuba, which is what the  
6 Plaintiff's Exhibit 4 was taken off of.

7 Do you recall seeing this box at any  
8 time prior to 1993?

9 MS. DORE: I'm sorry, I didn't hear  
10 the date.

11 (Record read.)

12 A. I may have.

13 Q. Did any of the presentations from the  
14 design person, Backner, that was presented to the  
15 senior management have the Cohiba label in the  
16 middle, the Cohiba logo in the middle?

17 A. I would say I'm not a hundred percent  
18 sure. I don't recall, it is so long ago. I would  
19 be speculating. I don't know.

20 Q. Looking at the two boxes today, would  
21 you say that the words "Cohiba" on the two boxes  
22 are similar or dissimilar?

23 A. I would say this is a different  
24 typeface.

25 Q. Other than that, that it is a

1 Rano

2 different typeface, would you say they are similar  
3 or dissimilar?

4 A. I would say they are both block  
5 lettering.

6 Q. It is your testimony that there was  
7 no discussion that you are aware of either at  
8 General Cigar or between General Cigar and the  
9 design person, over whether the lettering should  
10 or should not look like the Cuban lettering?

11 A. That's -- to the best of my  
12 recollection that's correct.

13 Q. And there was no discussion that you  
14 are aware of whether, as to whether the lettering  
15 did or did not look like the Cuba Cohiba  
16 lettering?

17 A. I would say there could have been  
18 some discussion on that. What it was I wouldn't  
19 recall, but there could have been some discussion  
20 on that.

21 Q. Do you recall who the discussion was  
22 with?

23 MS. DORE: Well, he didn't say it  
24 happened, he said it could have happened.

25 MR. GOLDSTEIN: I'm aware of that.

1 Rano

2 Q. But as we talk, sometimes your memory  
3 gets refreshed.

4 Do you recall more specifically  
5 having this conversation with a particular  
6 individual, Mr. Burg or Mr. Backner or somebody  
7 else?

8 A. If it did it would have been, it  
9 would have certainly been, if it took place it  
10 might have been legal, it might have been my  
11 superiors.

12 Q. When different designs were presented  
13 to senior management, were you present during the  
14 presentations?

15 A. Yes.

16 Q. And do you recall any discussions at  
17 those presentations regarding the Cuban Cohiba?

18 A. Yes.

19 Q. And what do you recall?

20 A. That we wanted to be sure that our  
21 package did not infringe on that, but also that we  
22 could not use the Indian head, nor the black and  
23 white check.

24 Q. Were you aware of any conversations  
25 between -- let me do it this way: Let me back up

1 Rano

2 between him and General Cigar regarding the  
3 General Cigar Cohiba?

4 A. Not in my presence.

5 Q. And not any hearsay knowledge?

6 A. Not any hearsay knowledge.

7 Q. Are you familiar with a magazine  
8 called Cigar Aficionado?

9 A. I am.

10 Q. Were you aware of the plans for the  
11 magazine before it actually came out?

12 A. I was.

13 Q. And how were you aware of it?

14 A. By its publisher made me aware of it.

15 Q. That is Marvin Shanken?

16 A. That's correct.

17 Q. And he worked, his office is in the  
18 same building as the New York offices of General  
19 Cigar; is that correct?

20 A. That's correct.

21 Q. And that building is owned by General  
22 Cigar?

23 A. I don't know who the titleholder of  
24 the building is.

25 Q. But Cigar Aficionado offices, they



1 Rano

2 are tenants of General Cigar, correct?

3 A. Again I don't know if General Cigar  
4 is the owner of the building or not. I don't know  
5 what the correct name for the owner of the  
6 building is.

7 Q. It is a Cullman-owned or controlled  
8 company?

9 A. To the best of my knowledge, yes.

10 Q. Cigar Aficionado has been there since  
11 it was launched?

12 A. Yes.

13 Q. And Wine Spectator also was there  
14 when you were there?

15 A. Yes.

16 Q. Were you located in New York or in  
17 Connecticut?

18 A. Both.

19 Q. So on occasions you would have  
20 conversations with Mr. Shanken in the building?

21 A. In his office.

22 Q. So you are aware of the prelaunch of  
23 the magazine?

24 A. I was aware that he was developing it  
25 and he was going to launch the magazine, yes, I

1 Rano

2 was.

3 Q. And he obviously was interested in

4 General Cigar advertising in his magazine?

5 A. That's correct.

6 Q. So when the first issue came out, I

7 take it you reviewed the first issue?

8 A. Yes.

9 Q. And at that time you are well aware  
10 of the Cuban Cohiba?

11 A. Yes.

12 Q. Prior to the magazine coming out, the  
13 first issue of Cigar Aficionado, what was your  
14 knowledge of the, to the reputation of the Cuban  
15 Cohiba?

16 A. I wasn't aware of the reputation of  
17 it, I was just aware of what it was.

18 Q. When you say "what it was," what do  
19 you mean?

20 A. That it was a product that basically  
21 was not in retail commerce, it was used as legend  
22 had it, as gifts, or as word had it, I shouldn't  
23 call it legend. There were gifts and smoked by  
24 the head of the Cuban government.

25 Q. Meaning Fidel Castro?

1 Rano

2 as Plaintiff's Exhibit 3, which is the premier  
3 issue of Cigar Aficionado in the fall of 1992.

4 Do you recall receiving that premier  
5 issue when it came out?

6 A. Yes, I do.

7 Q. Do you recall reviewing it?

8 A. I looked through it, yes.

9 Q. Do you recall when you received it?

10 A. I'm sure I received it a week before,  
11 or two weeks before it hit the newsstands.

12 Q. And it's labeled "Autumn," but do you  
13 know when you would have gotten it or when it hit  
14 the newsstands, either August or September?

15 A. I would guess.

16 Q. August or September?

17 A. Something like that, yes.

18 Q. You said you were vaguely aware of a  
19 trip to Cuba by Milstein and Mayer.

20 You are aware they went together I  
21 take it?

22 A. Through hearsay, yes.

23 Q. Are you aware that trip was in  
24 November of 1992?

25 A. No. At the time I probably was, but

1 Rano

2 I surely couldn't recall it right now.

3 Q. Were you aware at the time of a Cuban  
4 event regarding the 500 years since Columbus?

5 A. Yes, I was aware of that.

6 Q. And you were aware that was in  
7 November of 1992?

8 A. If you say so, if that's a fact, yes.

9 Q. But you were aware of it at the time  
10 that it happened?

11 A. Yes.

12 Q. But you don't recall that Mayer or  
13 Milstein went for that particular purpose?

14 A. Now that you bring it up I do recall  
15 that they were, that I did hear some discussion,  
16 not that they went for that particular purpose,  
17 but they were there.

18 Q. And that that 500-year celebration or  
19 event took place after the premier issue of Cigar  
20 Aficionado?

21 A. I believe so.

22 Q. According to this premier issue of  
23 Cigar Aficionado, there is a cover story, it says  
24 "Cuba's Best Cigar."

25 Do you recall what cigar the magazine

1 Rano

2 refers to as Cuba's best cigar?

3 A. If you just ask me that without the  
4 preliminaries of the conversation I would say no.  
5 I could make a guess, but I would say no.

6 Q. You don't recall today, you don't  
7 recall today what he called Cuba's best cigar?

8 A. Back then?

9 Q. Right.

10 A. No.

11 Q. At the time do you recall reviewing  
12 that article on Cuba's best cigar?

13 A. I'm sure I looked at the magazine  
14 cover to cover.

15 Q. And if you want to look at the  
16 article, but in fact what he identifies is in fact  
17 the Cuban Cohiba?

18 A. Right there, okay.

19 Q. And looking at the article now, does  
20 that refresh your recollection?

21 A. Sure.

22 Q. Do you recall having any reaction to  
23 that article?

24 A. No. I mean I just read it.

25 Q. Do you ever recall discussing with

1 Rano

2 anybody about the description of the Cuban Cohiba  
3 as Cuba's best cigar?

4 A. No.

5 Q. Were you surprised? Do you recall  
6 being surprised?

7 A. I don't recall anything, just that I  
8 would have read the article.

9 Q. Do you recall in any way thinking  
10 about the fact that General Cigar had registered a  
11 trademark for a Cohiba here in the United States,  
12 that General Cigar claimed to own the brand Cohiba  
13 here in the United States?

14 A. I took that as a given.

15 Q. But reading this, did that trigger  
16 any association between the identification of  
17 Cuba's best cigar as Cohiba and the fact that  
18 General Cigar claimed to own the rights, U.S.  
19 rights to the Cohiba?

20 A. Did it trigger any association is the  
21 question?

22 Q. Yes. This is a market opportunity or  
23 this is not a market opportunity or this is really  
24 bad for us, this is good for us, or gee, I didn't  
25 realize that their Cohiba was considered so, in

1 Rano

2 such a regard.

3 A. No. We owned a brand called Cohiba,  
4 we thought it was a viable brand. We had been  
5 working on it for long periods of time to bring it  
6 to market in a reformulated cigar and a  
7 reformulated package, because it was already in  
8 the market.

9 Q. The cigar that began to be sold to  
10 Dunhill and Mike's sometime in 1992, how was that  
11 cigar different than the prior General Cigar  
12 cigar, if you know?

13 A. It is a totally different -- let me  
14 make sure of the timeframe.

15 Q. I'm talking about the blend or the  
16 process by which it is made.

17 A. The one that was sold to Dunhill?

18 Q. Yes, and the one earlier.

19 A. Was a totally different cigar.

20 Q. In terms of the tobacco?

21 A. Everything.

22 Q. And the wrapper and how it was made?

23 A. Yes.

24 Q. Are you aware of any documents  
25 regarding how the 1992, '3 cigar would be made?

1 Rano

2 A. No.

3 Q. Or any influence it had on anything  
4 you did in relation to the launch?

5 A. No.

6 Q. Are you aware of any advertising by  
7 General Cigar of its Cohiba in 1992?

8 A. By General Cigar Company?

9 Q. Yes.

10 A. No.

11 Q. Are you aware of any advertising by  
12 General Cigar of its Cohiba from 1993 through  
13 1996?

14 A. You need to clarify the question for  
15 me.

16 Q. Okay. Are you aware of any ads that  
17 General Cigar took out in any newspapers, trade  
18 magazines, general magazines, promoting its Cohiba  
19 from 1992 to 1996?

20 A. No.

21 Q. Are you aware of any other kind of  
22 promotions paid for by General Cigar, promotions,  
23 advertising, media exposure of any kind regarding  
24 its General Cigar, its Cohiba from 1992 to 1996?

25 A. Yes.



1 Rano

2 Q. And what is that?

3 A. Dunhill ran a catalog brochure on the  
4 Cohiba.

5 Q. And who paid for that?

6 A. I would believe that General Cigar  
7 paid for it or paid a portion of it.

8 Q. Do you know what years Dunhill ran  
9 the Cohiba in its catalog?

10 A. I don't recall.

11 Q. Would that have been your  
12 responsibility and within the responsibility of  
13 your department?

14 A. It would have been the responsibility  
15 by the department to oversee what it looked like.  
16 It would have been the sales responsibility to  
17 sell the program. Marketing might have developed  
18 it, but they would have sold it.

19 Q. Do you know who designed the Dunhill  
20 catalog promotion of the Cohiba, do you know if it  
21 was Dunhill or General Cigar?

22 A. It was Dunhill. I'm almost sure of  
23 that, okay, I'm almost sure it was Dunhill.

24 Q. Do you know how much money General  
25 Cigar spent for Dunhill promotions?

1 Rano

2 have put it in his catalog, I'm not sure.

3 Q. Do you have any other knowledge of  
4 any promotion, advertising of General Cigar's  
5 Cohiba than Dunhill's catalogs?

6 A. And Mike's, that is all I can  
7 recollect.

8 Q. And you have no idea of the  
9 expenditures for promotion or advertising from '92  
10 to '96?

11 A. For that?

12 Q. Well, for everything, but that is  
13 what we have identified.

14 A. Well, for Cohibas?

15 Q. Yes.

16 A. No.

17 Q. Do you know how much you spent  
18 promoting Macanudos from '92 to '96?

19 A. I would have to add it all up. I  
20 don't know off the top of my head. I couldn't  
21 give you an accurate answer, it would be a guess.

22 Q. Would it be more than a million  
23 dollars a year?

24 A. I would say somewhere less than a  
25 million a year. Give me the years again now.

1 Rano

2 Q. I'm using the same years, '92 to '96.

3 A. Well, going into the '95, '96 period  
4 it was probably more than that. Earlier it was  
5 less than the number you have given me.

6 Q. More than the million in '95, '96 and  
7 somewhat less than that the previous years?

8 A. Yes.

9 Q. What about Partagas?

10 A. Partagas would be less than Macanudo.

11 Q. Maybe about half a million dollars a  
12 year, sound about right?

13 A. On average probably somewhere in that  
14 area.

15 Q. Do you know why the Cohiba was only  
16 sold through Dunhill and Mike's from '92 or '93  
17 through '96?

18 A. Yes.

19 Q. Why is that?

20 A. One, it wasn't the cigar nor the  
21 package that we wanted; and, two, we wanted to  
22 make sure we had the name in commerce.

23 Q. After two years of, one to two years  
24 of tasting and developing the cigar it was still  
25 not the taste you wanted?

1 Rano

2 A. That's correct.

3 Q. And what was wrong with the taste?

4 A. It didn't fit our profile.

5 Q. Profile for the company or profile  
6 for the brand?

7 A. For both.

8 Q. And what profile did you want for it?

9 A. If memory serves me correctly, we  
10 were looking for a very full-bodied cigar.

11 Q. Why?

12 A. The marketplace was shifting that  
13 direction. Our leading brand was not of that  
14 genre.

15 Q. Macanudo is considered a mild cigar?

16 A. By many people, yes.

17 Q. And the Cohiba you created, I mean  
18 the Cohiba that General Cigar created for the '92  
19 launch was not a full-bodied cigar?

20 A. It was a cigar that was already in  
21 existence that we used in the box. It was not a  
22 cigar that was created especially for it.

23 Q. When you say "already in existence,"  
24 what was it in existence as?

25 A. As a Temple Hall cigar.

1 Rano

2 Q. So there was no difference between  
3 this, the '92 launched Cohiba, and the Temple Hall  
4 cigar also sold by General Cigar?

5 A. That's correct.

6 Q. Just they are packaged differently?

7 A. That's correct.

8 Q. Do you know why those cigars were  
9 unbanded?

10 A. Yes, for the same reason that the  
11 packaging was the way it was. It wasn't -- we  
12 knew it wasn't final. We didn't want anything to  
13 be registering in a very big way with the consumer  
14 for a long period of time.

15 Q. Is it common in the cigar business to  
16 just take another, to take one cigar and just  
17 package it, call it some other cigar?

18 A. Yes, it is.

19 Q. By 1992 were you familiar or knew  
20 other knowledgeable people in the cigar industry  
21 outside of General Cigar?

22 A. Yes.

23 Q. And would you attend these annual  
24 RTDA conventions?

25 A. Yes.

1 Rano

2 Q. Do you recall at any time having  
3 discussions, when I say "at any time," during,  
4 after the premier issue of Cigar Aficionado came  
5 out, having discussions with other cigar people  
6 about Shanken's description of the Cuban Cohiba,  
7 Cuba's best cigar?

8 A. No.

9 Q. Do you recall any discussions  
10 generally about the Cuban Cohiba following the  
11 launch of Cigar Aficionado?

12 A. No.

13 THE WITNESS: Do you mind if I go to  
14 the men's room?

15 MR. GOLDSTEIN: Not at all.

16 (Recess taken.)

17 (Whereupon, Mr. Wollen left the  
18 proceedings at this time.)

19 BY MR. GOLDSTEIN:

20 Q. When we talked about the limited  
21 sales to just Dunhill and Mike's, you had given  
22 two reasons, one was it wasn't the cigar you  
23 wanted, we talked a little about that.

24 A. Or the packaging.

25 Q. Or the packaging. And then you said

1 Rano

2 you wanted to have your name in commerce.

3 What does that mean?

4 A. We wanted to make sure that the brand  
5 wasn't abandoned, so we wanted to make sure the  
6 name was out in commerce, the brand name.

7 Q. Do you know how many of these, this  
8 cigar, this intermediate cigar, the '92 to '96  
9 cigar, do you know how many were sold?

10 A. I would say hundreds of thousands,  
11 but I can't give you a specific number.

12 Q. Did you have any discussions with  
13 Alfred Dunhill regarding how this wasn't the cigar  
14 you wanted?

15 A. I didn't. I don't know if anybody  
16 else did, but I didn't.

17 Q. Do you know why they wanted to sell  
18 the cigar if you were not advertising it or  
19 marketing it?

20 A. A, we wanted to sell them because it  
21 gave us in a very restricted way national, you  
22 know, we could cover the country because of the  
23 location of their store, but in a very limited way  
24 because we knew it wasn't correct, so we asked  
25 them to do it.

1 Rano

2 They liked the idea of because it was  
3 an exclusive to them except for Mike's in Florida.

4 Q. Did you have any discussions with  
5 them about the power of the name?

6 A. I'm sure it was self-evident that it  
7 was a known name.

8 Q. When you say "a known name," known  
9 because of the General Cigar or known because of  
10 the Cuban?

11 A. Known because of the publicity that  
12 the name had, was getting, started to get at this  
13 time.

14 Q. And was that publicity associated  
15 with your cigar or the Cuban cigar?

16 A. I would probably say the Cuban cigar.

17 Q. Are you aware of any publicity of  
18 your cigar, your General Cigar's Cohiba prior to  
19 1995 say?

20 A. I'm not aware of any, but there were  
21 probably press clippings saying at the time when  
22 the boom started to take effect of Cohiba and so  
23 forth, but specifically I'm not aware of any.

24 Q. Is that why Dunhill was willing to  
25 sell it, because of the name, the Cohiba name?



1

Rano

2

A. That and exclusivity I think.

3

Q. And why did you sell to Mike's?

4

A. We had, there was a state

5 registration there that we wanted to overcome.

6

Q. Somebody had registered a name?

7

A. Trademark in the state, yes.

8

Q. And at Mike's, was this man Oscar

9

Boruchin?

10

A. Yes.

11

Q. Was he -- I know he is not Mike, but

12

was he the head of Mike's Cigars?

13

A. Yes.

14

Q. And he had previously worked for

15

General Cigar?

16

A. Before my time.

17

Q. Did you have any discussions with him

18

regarding the Cuban Cohiba?

19

A. No. I mean I wouldn't have known.

20

Q. Somebody else, I mean who was -- were

21

you the primary contact?

22

A. No, the sales were the primary point

23

people on that.

24

Q. At this point, when I say "this

25

point," '92, '93, were you the head of marketing

1 Rano

2 of premier cigars for the company?

3 A. Yes.

4 Q. And who at this time was your direct  
5 report or you were directly reporting to?

6 A. The president of the company, Mr.  
7 Burg or McNamara, depending on the timeframe.

8 Q. When did you move into a position  
9 when you were reporting directly to the president?

10 A. When I became the vice president of  
11 marketing.

12 Q. That would have been, I wrote down  
13 '90 to '91?

14 A. Something like that, yes.

15 Q. So from that time on until you left  
16 the company your direct report was to the  
17 president of the company?

18 A. Except for the last year I, '99 I  
19 reported to the executive vice president.

20 Q. And who was that?

21 A. David Dansiger.

22 Q. In 1992, '93 was there someone under  
23 you responsible for the marketing of the Cuban --  
24 the General Cigar Cohiba?

25 A. There was a marketing manager, yes.

1 Rano

2 him?

3 A. No.

4 Q. You wouldn't happen to know his  
5 address?

6 A. I don't.

7 Q. And would he have been the person  
8 direct, with direct conversations or direct link  
9 to Alfred Dunhill and Mike's, or would that have  
10 been you?

11 A. No. It would have been at that  
12 time -- he was in sales, he was not in marketing  
13 at that time, so he would have reported to his  
14 boss who's -- let me think when he was in  
15 marketing.

16 I think he came to marketing sometime  
17 in 1993 maybe, '94, I don't recall. So he may or  
18 may not have had direct links to Dunhill. To my  
19 knowledge not Mike's though.

20 Q. Do you recall any conversations with  
21 either Dunhill or Mike's regarding any consumer  
22 confusion between the General Cigar Cohiba and the  
23 Cuban Cohiba?

24 A. Only that we said that we don't want  
25 to create any confusion, that is why we made it,

1 Rano

2 no ban on it, that is why the packaging was done  
3 the way it was. We did not want the name --  
4 Dominican Republic was put on it to eliminate any  
5 confusion.

6 Q. Did you get any information from  
7 either of those two retailers regarding any kind  
8 of consumer confusion?

9 A. No.

10 Q. Do you recall giving any, I don't  
11 want to use the term "instructions," but providing  
12 any information or advice to Dunhill or Mike's  
13 regarding what they should tell customers if they  
14 asked about whether there was any relationship  
15 between this product and the Cuban product?

16 A. If there was, we would have  
17 instructed them that this cigar was made in the  
18 Dominican Republic, here are the ingredients in  
19 it, it is not in any way, shape or form a  
20 knock-off of a Cuban cigar. It is what it is, a  
21 fine cigar in its own right.

22 Q. You say you would have done that. Do  
23 you recall --

24 A. If we had, we would have done  
25 something along those lines if we had.

1 Rano

2 Q. But I'm asking if you have any  
3 recollection --

4 A. Any recollection --

5 MS. DORE: Let him finish the  
6 question.

7 Q. Whether you have any recollection of  
8 providing that as sort of prophylactic advice or  
9 advice to a particular situation?

10 A. We may have preempted the  
11 conversation, we may have instigated the  
12 conversation, just telling Dunhill what we -- what  
13 it was and what they should or how they should  
14 position it. What they did could be on their own,  
15 but I believe we had some conversations along  
16 those lines.

17 Q. Anything more specific than what you  
18 just told me?

19 A. I wouldn't think so, but I wasn't  
20 there so I don't know.

21 Q. Do you know of any documents  
22 exchanged, or any memos between the two regarding  
23 potential questions or confusion between the two  
24 products?

25 A. It wouldn't have come from me. I

1 Rano

2 don't know of any, so I don't know.

3 Q. Are you aware of an effort or a  
4 project between General Cigar and its advertising  
5 agency, McCaffery Ratner, in 1993 regarding a big  
6 launch of the General Cigar Cohiba?

7 A. I'm sure there were probably ongoing  
8 conversations regarding Cohiba and our other  
9 brands as to how to best develop marketing  
10 strategy for the brand. Advertising strategies,  
11 not marketing, but advertising strategies for the  
12 brands.

13 Q. Do you recall specifically in 1993  
14 McCaffery Ratner beginning to develop a strategy?

15 A. Yes.

16 MS. DORE: Let him finish the  
17 question.

18 Q. For like a major launch of the  
19 General Cigar Cohiba?

20 A. I remember them starting a  
21 preliminary work for the brand.

22 Q. Do you know, were you involved in  
23 initial contacts with them, telling them this is  
24 what we want you to do or this is where we want  
25 you to go?

1 Rano

2 A. I would have been the person that  
3 would be primarily discussing this with them.

4 Q. You would have been the primary  
5 contact?

6 A. Correct.

7 Q. Do you recall an initial meeting when  
8 it took place?

9 A. No.

10 Q. Would you have any memos or notes or  
11 documents of, showing when you first began to talk  
12 to them about this?

13 A. I don't believe I would. They would  
14 have, I would believe that they would have some  
15 documentation.

16 Q. Do you recall who you met with in the  
17 initial meeting about this?

18 MS. DORE: Objection, he didn't  
19 testify that there was an initial meeting.

20 Q. Was there an initial meeting where  
21 they said "We would like you to start working on a  
22 promotional campaign for our Cohiba"?

23 A. My sense would be that in the course  
24 of ongoing meetings with McCaffery Ratner we would  
25 discuss a number of brands of which an assignment

1 Rano

2 discussions about strategies. I recall that we  
3 felt we wanted to have a Caribbean influence in a  
4 timeframe of the '50s.

5 Q. Do you recall any discussions with  
6 McCaffery regarding the Cuban Cohiba?

7 MS. DORE: When you say "McCaffery,"  
8 are you talking to one of the McCaffery  
9 people, or are you talking about McCaffery  
10 Ratner, the firm?

11 MR. GOLDSTEIN: That is a good  
12 point. I'm talking about the McCaffery  
13 Ratner advertising firm.

14 Q. Did you have any discussions with the  
15 people at McCaffery Ratner regarding the Cuban  
16 Cohiba?

17 A. I don't recall any, but I would have  
18 to say that there probably were some.

19 Q. But you don't recall the substance?

20 A. No.

21 Q. Who did you deal with at McCaffery  
22 Ratner?

23 A. For the most part on the initiation  
24 of anything I only dealt with Sam Ratner. As  
25 things progressed I worked with Bill McCaffery and



1 Rano

2 whatever team was working on the creative project.

3 Q. Was Warren Pfaff usually involved in  
4 the creative project for General Cigar premiums?

5 A. He was, but he was not involved in  
6 the Cohiba project to my knowledge. He was not  
7 the main creative force behind it.

8 Q. Who would you say was the main  
9 creative force?

10 A. Bill and Sheila McCaffery, at least  
11 as it was presented to me.

12 MR. GOLDSTEIN: Do you want to take  
13 lunch and then I'll come back and go  
14 through some other documents.

15 MS. DORE: Okay.

16 (Lunch recess: 12:35 p.m.)

17

18

19

20

21

22

23

24

25

1 Rano

2 article. But the second part of your question  
3 regarding --

4 Q. Were they aware of your Cohiba or  
5 whether you got the sense from the discussion  
6 "Well, I didn't even know you had a Cohiba"?

7 A. They were aware that we owned the  
8 name in this country.

9 Q. Did General Cigar provide information  
10 to McCaffery Ratner in writing?

11 A. I would say we probably did.

12 Q. Let me show you a couple of documents  
13 and ask you if you have seen them before, or if  
14 you can identify them.

15 The first one was previously marked  
16 as Plaintiff's Exhibit 6, and it is an undated  
17 document, headed "Marketing the Cohiba Cigar," it  
18 is two pages, and I ask you if you can take a look  
19 at it for a moment.

20 My first question is whether you  
21 recognize the document?

22 A. I saw this document yesterday, but  
23 before that I didn't recognize it.

24 Q. And so I take it you don't know who  
25 drafted it?

1 Rano

2 A. No.

3 Q. Do you know if it was created by  
4 General Cigar, or whether it was created by the  
5 McCaffery Ratner people?

6 A. I don't know that.

7 Q. And then presumably you wouldn't know  
8 the date of it either?

9 A. No.

10 Q. Would you agree with the sentence,  
11 the first sentence in the first full paragraph  
12 that, assuming we are in 1993, "The tobacco  
13 industry has been in general decline since 1987"?

14 A. I would agree with that.

15 Q. The last sentence on the first page  
16 says "When the embargo is lifted, it is important  
17 that General Cigar continue to own the Cohiba name  
18 so that they will have leverage in distributing  
19 the real, Cuban Cohiba."

20 Do you recall having any discussions  
21 regarding that point?

22 A. Not in reference to this particular  
23 document.

24 Q. Outside of the document, do you  
25 recall having any discussions that it was

1 Rano

2 important for General Cigar to continue to own the  
3 Cohiba name so they will have leverage in  
4 distributing the Cuban Cohiba?

5 A. No.

6 Q. I'm talking about outside of  
7 reference to this document.

8 A. To your question, no.

9 Q. Do you recall referring to the Cuban  
10 Cohiba at any point as the real Cuban Cohiba?

11 A. No.

12 Q. Was there an understanding that the  
13 Cuban Cohiba was the real Cohiba and the General  
14 Cigar was sort of a brand to be used one way or  
15 the other in relation to the Cuban Cohiba?

16 A. It was our understanding there was a  
17 cigar from Cuba that was called Cohiba. We owned  
18 the name Cohiba in the United States and it was a  
19 brand that we wanted to bring to the market.

20 Q. Do you recall any discussions in this  
21 time period, '92, '93, '94, regarding maintaining  
22 ownership of the Cohiba name so that you would  
23 have a position with the Cubans should the embargo  
24 be lifted?

25 A. Not in those terms.

1 Rano

2 Q. Something similar to that?

3 A. Similar.

4 Q. And what was that?

5 A. That like our other brands, we wanted  
6 to make sure the name Cohiba was in commerce, and  
7 we felt that we owned the rights to that just the  
8 way we owned Partagas, some other brands from  
9 Cuba. And that if the embargo was ever lifted,  
10 then we would have the rights to distribute Cuban  
11 brands such as Partagas, Cohiba, Bolivar, and  
12 others.

13 Q. Is your understanding that if General  
14 Cigar was able to maintain ownership of the Cohiba  
15 brand and the embargo was lifted, Cubans would  
16 have to go through General Cigar in order to sell  
17 the Cuban Cohiba in the United States?

18 A. You see, that is a two-part question,  
19 okay. The first part is we did own the name in  
20 the United States. The second part is that to the  
21 best of my knowledge, that because we did own the  
22 name, that the general assumption was that the  
23 Cubans would have to deal with the American  
24 companies who own the names. We wanted to make  
25 sure the name Cohiba was in commerce. It wasn't a

1 Rano

2 question about who owned it.

3 Q. And the reason you want to make sure  
4 it is in commerce is to maintain your ownership  
5 position?

6 A. No, to protect the trademark.

7 Q. To protect trademark. Do you know  
8 where the person who wrote this document would  
9 have gotten this information from that we're  
10 looking at on the first page?

11 A. The industry information could have  
12 been found anywhere, okay. The second paragraph  
13 with regards to Partagas large and small, such and  
14 such, that would have been given to people in  
15 briefings when we are talking about the brand,  
16 different brands in general.

17 And the last one, I don't know where,  
18 the last two paragraphs, at least on the first  
19 page, I don't know where they would have gotten --  
20 there is no information there. It looks like  
21 conjecture to me.

22 Q. Based on looking at the type style or  
23 the word style and reading through this, do you  
24 have any opinions, I'm not asking you to simply  
25 flat out guess, but do you have an opinion based

1 Rano

2 on any of the information presented here, as to  
3 who would have created this document?

4 A. My opinion would have been it would  
5 be a McCaffery Ratner document.

6 Q. It doesn't look like something Bill  
7 Pfaff would have prepared or Sheila McCaffery  
8 style? Again you don't have to have an opinion,  
9 but if you do.

10 A. I don't have an opinion on that.

11 Q. In the first sentence in the last  
12 paragraph it says "There is a problem that could  
13 lead to confusion in the marketplace with  
14 introduction of a premium cigar with the Cohiba  
15 name. There is a Cuban Cohiba already being  
16 advertised here."

17 Did General Cigar take any steps when  
18 it launched or relaunched the Cohiba in '92, '93,  
19 to alleviate or avoid confusion in the  
20 marketplace?

21 A. By the very nature of the product and  
22 by the very nature of the packaging.

23 Q. Meaning?

24 A. Meaning there were dissimilar  
25 packages and the cigar itself was dissimilar and

1 Rano

2 there was no identification on the cigar, i.e., a  
3 band.

4 Q. Just looking at the loose cigar, how  
5 would someone know whether it was Cuban or  
6 Dominican?

7 A. If it was in the box it would say so.

8 Q. You had said people, retailers would  
9 sometimes have the box open so people could buy  
10 loose cigars?

11 A. Correct.

12 Q. By unbanding the cigars or not  
13 banding the cigars there was no way of  
14 identifying, once you had the cigar, where it was  
15 from?

16 A. There would be a way to identify the  
17 cigar as not being Cuba, in that the cigar wrapper  
18 was Connecticut-grown wrapper that was not  
19 indigenous to Cuba.

20 Q. Would that have been known to an  
21 average consumer?

22 A. I couldn't say, I don't know the mind  
23 set of an average consumer.

24 Q. Did General Cigar have an  
25 understanding that the general consuming public of



1 Rano

2 its cigars could distinguish where the wrappers  
3 were from by sight?

4 A. A person of some knowledge might be  
5 able to distinguish generally where the wrappers  
6 are from, yes.

7 Q. The average cigar?

8 A. It would be difficult.

9 Q. Any other things, anything else other  
10 than the product or the packaging?

11 A. Could you expand on that?

12 Q. Did General Cigar or Mike's or Alfred  
13 Dunhill to your knowledge take any other steps to  
14 alleviate or avoid any potential confusion between  
15 the Cuban and the General Cigar Cohiba, other than  
16 what you described, the product or the packaging?

17 A. That I don't know.

18 Q. In the second page in the first  
19 paragraph, the second sentence, I guess you need  
20 the first sentence to follow the second, "At the  
21 present time no Cuban cigars are legally sold here  
22 in the United States. This is important because  
23 generally Cuban-made cigars are considered the  
24 finest in the world."

25 In 1993, well, would you agree with

1 Rano

2 that statement as of 1993?

3 MS. DORE: Which statement?

4 MR. GOLDSTEIN: We know Cuban cigars  
5 could not be legally sold, so I'm really  
6 focusing on the second sentence.

7 A. I would not agree with that  
8 statement. Personally I wouldn't.

9 Q. Was it the general reputation that  
10 Cuban cigars were considered the finest in the  
11 world?

12 A. I would think, I would say that that  
13 was, by the general public would be a true  
14 statement.

15 Q. And in the last paragraph it says  
16 "Cohiba is the magic word in the cigar industry.  
17 It is consistently given top ranking by the  
18 industry judges, and the name has a high  
19 recognition factor here in the U.S. despite the  
20 fact it cannot be purchased in the country."

21 The first thing I would ask you is do  
22 you understand that paragraph to be referring to  
23 the Cuban Cohiba?

24 A. In reading this I would.

25 Q. Do you agree that Cohiba is or was at

1 Rano

2 that time the magic word in the cigar industry?

3 A. No.

4 Q. You don't know who wrote this?

5 A. I don't.

6 Q. And you don't know the source of the  
7 information?

8 A. Again I believe it is just  
9 conjecture.

10 Q. So it is somebody from your  
11 advertising agency or somebody from General Cigar  
12 who wrote this?

13 A. I don't know.

14 Q. Would you agree it is consistently  
15 given top ranking by industry judges?

16 A. I don't know who the industry judges  
17 are.

18 Q. Were you aware it was ranked quite  
19 high in Cigar Aficionado, Cohibas?

20 A. Yes, I do.

21 Q. And would you agree the name has a  
22 high recognition factor here in the U.S.?

23 MS. DORE: You read a sentence that  
24 is in the present tense. Put it in the  
25 time context.

1 Rano

2 Q. Would you agree at that time the name  
3 had a high recognition factor here in the U.S.?

4 A. It might have been beginning to gain,  
5 but I don't think it was high at the time.

6 Q. Are you aware of any surveys or  
7 studies conducted in 1993 or 1994 regarding  
8 recognition or consumer awareness of either Cuban  
9 Cohiba specifically or Cuban cigars generally?

10 A. I know General Cigar did some  
11 research. Whether Cohiba comes up in it or not I  
12 don't recall.

13 Q. Do you know when they did that?

14 A. I believe there was some, I believe  
15 there was some in the timeframe you mentioned.

16 Q. If you look at the fourth full  
17 paragraph, the fifth full paragraph, the one with  
18 the name Cohiba was not, the paragraph after it,  
19 they tie together. I would rather not read the  
20 whole thing into the record, but I would ask you  
21 to look at the two paragraphs.

22 A. Okay.

23 Q. In the second of those two  
24 paragraphs, the first sentence is "It is  
25 important, therefore, for General Cigar to launch

1 Rano

2 this product before that happens," and by "that  
3 happens," it is referring to the removal of the  
4 trade embargo against Cuba.

5 Do you know, let me ask you, was it  
6 important for General Cigar to launch this product  
7 before the trade embargo against Cuba was lifted?

8 A. That was never in our discussions,  
9 that was not an issue, it was not important.

10 Q. Do you have any idea where the author  
11 got these statements from?

12 A. If I read the whole part of the first  
13 page and second page, I believe it is someone's  
14 opinion, that's all.

15 Q. You testified before you don't recall  
16 seeing this document before?

17 A. I didn't testify to that. I  
18 testified that --

19 Q. You had not seen this document  
20 before, or prior to yesterday?

21 A. Prior to yesterday.

22 Q. Let me clarify that. Prior to  
23 yesterday is it your testimony you don't recall  
24 seeing this document, or you had not seen this  
25 document?

1 Rano

2 A. My testimony is I had not seen this  
3 document.

4 Q. Let me show you what I had previously  
5 marked as Plaintiff's Exhibit 7, and it is called,  
6 the first page just says "Cohiba" and then there  
7 is a handwritten date of 1993 and a second page,  
8 it says "Marketing the Cohiba cigar, selling a  
9 premium cigar, a declining tobacco market."

10 Have you seen this document before?

11 A. Again, I saw this document yesterday.

12 Q. Prior to that time?

13 A. I may have seen this document prior  
14 to that.

15 Q. Do you know if this is a McCaffery  
16 Ratner or General Cigar document?

17 A. I can't be sure who did this  
18 document.

19 Q. And you can't be sure which company,  
20 you can't be sure which individual?

21 A. Correct.

22 Q. Is this in a form that either General  
23 Cigar or McCaffery would have used, but not the  
24 other, just sort of sideways long paging?

25 A. I'm not sure what McCaffery would

1 Rano

2 have used, so I can't differentiate.

3 Q. But General Cigar might have created  
4 a document in this format?

5 A. Possibly, yes.

6 Q. The first paragraph talks again about  
7 the general decline in the tobacco industry.

8 Why would a company launch a new  
9 product in an expensive advertising campaign in a  
10 declining market?

11 A. By 1993, although that wasn't the  
12 height of the boom, you see it says it is a  
13 five-year decline, that is pre-1993, we start to  
14 see some up ticks in the premium cigar business.  
15 We were getting a general sense that premium  
16 cigars were going to take off, but not, and they  
17 finally did, the launch of Cigar Aficionado.

18 The general good PR regarding cigars,  
19 the high incident of highly visible people smoking  
20 cigars all gave us a good feeling that the cigar  
21 business, the premium cigar business was going to  
22 show some increases.

23 Q. Now, if you turn to the third page of  
24 the document, or the next page.

25 A. The third page being after the cover

1 Rano

2 or --

3 Q. The next page after, 532 on the

4 bottom.

5 Do you recall seeing, it's in the

6 middle of the page, it says "Strategy phase 1,

7 phase 2."

8 Do you recall seeing these

9 strategies, even if not in this document?

10 A. I can't say for sure.

11 Q. The phase 1 strategy, "Exploit the

12 Cohiba name with its reputation as one of the

13 world's finest cigars among cigar smokers to build

14 a brand image for the U.S. product."

15 Is it your understanding that is

16 referring to the Cuban Cohiba?

17 A. That would be my understanding.

18 Q. And you don't recall whether or not

19 you saw this as a strategy?

20 A. I don't recall.

21 Q. Do you recall any discussions about

22 whether to use a strategy of exploiting the Cuban

23 Cohiba, the Cuban Cohiba name or reputation?

24 A. If the general discussions of a

25 marketing group, I think that would, different



1 Rano

2 things of that nature, discussions of that nature  
3 would be standard operating procedure.

4 Q. Do you recall any specific  
5 discussions one way or the other, content?

6 A. My focus was on, and my recollection  
7 was that we were, we really wanted to come up with  
8 a great product from the Dominican Republic that  
9 we could then market under the Cohiba name. That  
10 was our goal.

11 Q. Was it your intent, by "your" I mean  
12 General Cigar's, to use the theme or reputation of  
13 the Cuban Cohiba to get its, to get interest or  
14 excitement in its product?

15 A. I don't know how one would go about  
16 that. I don't know how you would go about doing  
17 that.

18 Q. Do you recall having any discussions  
19 about how you would exploit the Cohiba name, the  
20 Cuban Cohiba name?

21 A. No.

22 Q. Do you know where this came from,  
23 this phase 1 strategy of exploiting the Cuban  
24 Cohiba name?

25 A. No, I really don't.

1 Rano

2 Q. Do you remember in any way critiquing  
3 or criticizing this document or the author of the  
4 document?

5 A. I don't remember it. If this was a  
6 document that came from the agency, there are  
7 parts of it that I do recall, but I don't recall  
8 the document per se.

9 Q. The strategy phase 1, "Exploit the  
10 Cohiba name" with the rest of the sentence appears  
11 in a variety of McCaffery, when I say "McCaffery  
12 documents," appears in a variety of documents that  
13 came from the McCaffery files.

14 Even if you didn't see this document,  
15 do you recall seeing it in any other presentations  
16 or discussions?

17 A. Again, through the ongoing process I  
18 am sure that at meetings we discussed -- if this  
19 came from them they would put it before us, not  
20 specifically this one, but some document to go  
21 through it.

22 Q. But you don't have any recollection  
23 of that?

24 A. I don't have any specific  
25 recollection of it, no.

1 Rano

2 Q. And you don't have any recollection  
3 of pro or con, this is a good strategy, a bad  
4 strategy, how are we going to implement this  
5 strategy?

6 A. That is a different question. Again,  
7 we came down on the strategy that was to ensure  
8 that the cigar was the very best we could produce,  
9 that fit the niche of the marketplace that we were  
10 trying to fill, and that we just provided the very  
11 best that we could under the brand Cohiba. That  
12 was the objective.

13 Q. And in the end, I don't mean in the  
14 end, but as part of that objective was there a  
15 conscious strategy to exploit the Cuban Cohiba  
16 name?

17 A. No.

18 Q. Let me show you what has been marked  
19 as Plaintiff's 8. It's a document dated June 4,  
20 1993 from Donna to the Cohiba General Cigar team,  
21 referencing Cohiba creative strategy statement.

22 Would you take a minute and tell me  
23 if you recall seeing this document before?

24 A. I remember the elements of this  
25 document.

1 Rano

2 Q. If you look on the third page, MC  
3 00550.

4 A. Okay.

5 Q. Again we have the strategy and again  
6 we have the same or similar sentence, "Exploit the  
7 Cohiba name with its reputation as one of the  
8 world's finest cigars amongst cigar smokers to  
9 build a brand image for the U.S. product," and  
10 underneath that we have tactics.

11 Looking at the strategy and the now  
12 added, the tactics, do you recall any discussions  
13 about the tactics that are referred to or the  
14 strategy?

15 A. I recall some of the tactics, yes.

16 Q. Do you recall any discussion about  
17 that?

18 A. Yes.

19 Q. What do you recall?

20 A. That the only thing that subliminally  
21 connected the name with pre Fidel Castro, is the  
22 fact that we wanted to create the imagery of the  
23 Caribbean in the timeframe of the '50s. Obviously  
24 that was pre-Castro.

25 Q. Why, not obviously was it pre-Castro,

1 Rano

2 but why did you want to create that image?

3 A. Which part of it?

4 Q. You said you wanted to create an

5 imagery of the Caribbean in the '50s.

6 A. Right.

7 Q. I'm asking why.

8 A. Why, which part of it though?

9 Q. Why an imagery of the Caribbean of  
10 the '50s, Caribbean in the '50s either together or  
11 separately.

12 A. It is really two things. The  
13 Caribbean, because that is where cigar-making is  
14 traditionally from, in the '50s there was, we felt  
15 there was a greater amount of romance in the '50s.  
16 It was a time of martinis, it was a time of Stork  
17 Club, it was the time of the Copacabana, it was a  
18 time of great Latin music and so forth, so the  
19 '50s became the symbol of it.

20 Q. And looking at this document, does it  
21 in any way refresh your recollection of any other  
22 discussions regarding the exploitation of the  
23 Cuban Cohiba name?

24 A. No.

25 Q. Do you recall telling McCaffery

1 Rano

2 Ratner "We are not going to do that" or "That's  
3 not a good strategy" or "Reject that strategy"?

4 A. The strategy that we finally  
5 developed was the one of a cigar from the  
6 Dominican Republic standing on its own with the  
7 imagery that I have stated before.

8 Q. But you don't recall telling  
9 McCaffery Ratner anything specifically, to stop  
10 strategizing on how you are going to exploit the  
11 Cuba Cohiba name?

12 A. I don't recall.

13 Q. Who else from General Cigar would  
14 have been dealing with, or was dealing, rather,  
15 with the McCaffery firm during this time period?

16 A. It would have been myself and John  
17 Geoghegan and maybe -- just the two of us.

18 Q. I don't -- this is obviously your  
19 testimony, but Mr. Geoghegan testified he came to  
20 General Cigar at the end of 1994?

21 A. Yes.

22 Q. Do you believe that prior to him  
23 coming to General Cigar he was working for the  
24 McCaffery firm on the Cohiba project?

25 A. No. What I mean by that is as we got

1 Rano

2 closer to launch, he got involved in some of the  
3 strategies.

4 Q. Well, '96, '97 I have seen his name  
5 on documents.

6 A. At this time it would be probably  
7 myself and probably Austin McNamara.

8 Q. And Mr. McNamara, he is retired?

9 A. He has left the company, I don't  
10 think he is retired.

11 Q. I'm just going to show you quickly  
12 Plaintiff's 9, and I'm just going to ask you to  
13 look at the second page and ask you whether you  
14 can identify that person's handwriting or not.

15 A. No.

16 Q. No?

17 A. No.

18 Q. Would you recognize Sheila  
19 McCaffery's handwriting?

20 A. No.

21 Q. Would you recognize Bill McCaffery's  
22 handwriting?

23 A. No.

24 Q. Would you recognize Warren Pfaff's  
25 handwriting?

1 Rano

2 Q. If you look at the last paragraph on  
3 the first page where it describes the cigar, am I  
4 correct that this is a cigar that at that time did  
5 not exist, this is like a proposed cigar?

6 A. Yes.

7 Q. And at that time were you exploring  
8 an African cameroon wrapper and just Cuban seed  
9 idea on the Dominican Republic?

10 A. We were hoping to use African  
11 cameroon wrappers, yes.

12 Q. The paragraph "Current positioning  
13 statement," it says "If any, the only Cohiba cigar  
14 known today by American males is one made in Cuba  
15 that cannot, with rare exception, be legally  
16 purchased within the U.S."

17 Would you agree with that statement,  
18 not the legally purchased part, but the first part  
19 of the sentence?

20 A. Yes.

21 Q. I'm going to show you Exhibit 11 only  
22 for the purpose of whether you can identify the  
23 handwriting, which may be more than one person, it  
24 may even be as many as three people, I don't know.

25 A. To me it looks like it is more than



1 Rano

2 one person.

3 Q. I would agree with you on that. I  
4 just wondered if you knew, if you recognized any  
5 of the handwriting.

6 A. This looks like Austin McNamara's to  
7 me.

8 Q. When you say "this," would you  
9 identify the page?

10 A. MC 00688.

11 Q. So that would indicate to you that he  
12 had reviewed that or had received that document?

13 A. That would indicate that.

14 Q. And on the front page?

15 A. I don't know whose that is.

16 Q. And then I believe on the last page  
17 there is handwriting?

18 A. I don't know whose that is.

19 Q. Do you recall Austin McNamara saying  
20 anything about this exploit the Cohiba name  
21 strategy?

22 A. I don't recall anything in that, just  
23 in those, in that term, okay, or discussion only  
24 around that.

25 Q. Well, I'm not asking whether it was

1 Rano

2 Q. He wouldn't have said "John, get me a  
3 talking points memo" or --

4 A. Not on something like this, no.

5 Q. Let me give you again a web copy of  
6 the interview.

7 MR. GOLDSTEIN: Let me have this  
8 marked as an exhibit.

9 (Plaintiff's Exhibit 45, document  
10 bearing Bates numbers GC 001074 through  
11 001088, marked for identification, as of  
12 this date.)

13 (Whereupon, Mr. Wollen joins the  
14 proceedings at this time.)

15 MS. DORE: I want to correct  
16 something you said before about the web  
17 copy of Exhibit 25, which was the interview  
18 with Edgar Cullman, Sr. You commented  
19 about it coming from General Cigar's files.  
20 I don't think that is correct.

21 MR. GOLDSTEIN: It has General Cigar  
22 Bates number.

23 MS. DORE: I believe that this was  
24 something that was printed up by G.D.M.'s  
25 counsel in the course of that case, and the

1 Rano

2 reason it has a General Cigar production  
3 number on it is because we produced it to  
4 you in response to your request. I don't  
5 believe that it actually came out of  
6 General Cigar's files in that sense.

7 MR. GOLDSTEIN: The reason I thought  
8 that is most of the documents or many of  
9 the documents from the G.D.M. case have a P  
10 number and a GC number. My understanding  
11 was the P number was from the G.D.M. case  
12 and the GC number was from this litigation.

13 MS. DORE: We would not have a P  
14 number on a document that G.D.M. produced  
15 to us in this case.

16 BY MR. GOLDSTEIN:

17 Q. I gave you a web copy of the article,  
18 it is in the autumn 1996 Cigar Aficionado, and the  
19 interview begins on page 101. But I'm going to  
20 show you the actual magazine and ask if you recall  
21 this, the article?

22 A. Yes.

23 MR. GOLDSTEIN: And as I told Miss  
24 Dore, I will make a copy from the magazine.

25 Q. If you turn your attention to page 6

1                                   Rano  
2 of 15, towards the bottom the Cigar Aficionado  
3 interviewer asks, starts asking some questions  
4 about Cohiba.

5                   Let me back up. Do you know who the  
6 interviewer was in this, for this article? Do you  
7 know if it was Mr. Shanken?

8           A.       I don't recall.

9           Q.       And as to the interview with Mr.  
10 Cullman, Sr.?

11          A.       That I believe was Margaret.

12          Q.       The interviewer asks "One obvious  
13 question is Cohiba. What are you doing with that?  
14 You own the American rights, but you haven't done  
15 much with it. Why haven't you taken the brand to  
16 market and made it a priority, given the awareness  
17 and the consumer demand for the brand?"

18                   And Mr. Cullman gives an answer, part  
19 of which is "We don't have a blend and a unique  
20 taste for that cigar today that we would be happy  
21 with."

22                   Is that consistent with what you were  
23 testifying to before?

24          A.       That is what we were stating all day.

25          Q.       And he says "We think it is such a

1 Rano

2 blockbuster brand name that we must come out with  
3 something that is equal to the expectation of the  
4 brand."

5 Why was it such a blockbuster brand  
6 name?

7 A. It had very strong connotations in  
8 the cigar market.

9 Q. The connotation associated with the  
10 Cuban Cohiba?

11 A. You are talking about this time  
12 period?

13 Q. 1996, yes.

14 A. Yes.

15 Q. Yes, the strong connection, the  
16 strong power of the Cuban Cohiba name?

17 A. Yes.

18 Q. He says "It must come out with  
19 something equal to the expectation of the brand."

20 What would be the expectation of that  
21 brand?

22 A. The expectation could be in one's  
23 imagination. The expectation was a superior  
24 product, however that's defined.

25 Q. Is that because the Cuban Cohiba was

1 Rano

2 Q. So were you experimenting with  
3 cameroon wrappers for Macanudo Robust?

4 A. Yes.

5 Q. Even though the idea was to go with  
6 the Connecticut wrapper?

7 A. That was our preference.

8 Q. And there is less cameroon wrapper  
9 than there is Connecticut shade, is that the  
10 problem?

11 A. Correct.

12 Q. Just so I'm clear, when you were  
13 testing cameroon wrapper cigar blends, that was  
14 not just for Cohiba?

15 A. As I said earlier we were testing,  
16 for the most part we were at this period of time  
17 trying to come up with a cigar for Macanudo  
18 Robust. We hit on a cigar that was really well  
19 accepted through focus groups and we decided that  
20 would be a good cigar for Cohiba.

21 Q. When was the decision made to take  
22 the new Cohiba to market and launch it in 1997?

23 A. I don't recall.

24 Q. Do you recall if it was some time in  
25 '97 or some time in '96?

1 Rano

2 A. My recollection is we had a very  
3 short timeframe to do it, is my recollection.

4 Q. If the RTDA was July of 1997 and the  
5 launch itself, the party was September 25, which I  
6 believe is like the launch date for the actual  
7 sale of the cigar, does that tell you when the  
8 decision was made to go ahead?

9 A. It would give us an idea, yes. It  
10 would have to be very early in, very early in '97.  
11 We would have had a good feel for it.

12 Q. Do you remember a meeting with you,  
13 Mr. McNamara, Mr. Geoghegan discussing, a initial  
14 meeting as far as Mr. Geoghegan was concerned,  
15 that the management has decided to launch at the  
16 RTDA or get ready for the RTDA and now we have to  
17 do the work?

18 A. I'm sure if there is a document on it  
19 there probably was some sort of meeting saying  
20 that we think we have a cigar, we think we would  
21 like to launch it at the RTDA, so we have to get  
22 going on it.

23 Q. I don't have such a document.

24 A. I don't know.

25 Q. You don't have a recollection of that

1

Rano

2

Q. The timeframe, I'm having a little trouble with the timeframe myself, but it is at a point when a decision is being made or a decision has been made to launch the new Cohiba, summer, fall of 1997.

7

A. The packaging issue was raised and at this time we looked at some, we asked the package designer to come up with some, to look at what he did and see what else he could come up with. And then later into it some time, I would say late spring, early spring, maybe another package designer got involved in it.

14

Q. So you started with Backner?

15

A. Backner.

16

Q. And you abandoned him?

17

A. He was working on it, but we brought somebody else in.

19

Q. The guy you brought in was Marmo Designs?

21

A. Yes.

22

Q. And it is Marmo that ended up doing the actual work that became the box?

24

A. That's correct.

25

Q. Do you recall any discussions about



1 Rano

2 the Cuban Cohiba in the context of moving it with  
3 the packaging work?

4 A. At this time we were getting  
5 directions that we wanted to do something  
6 radically different than anything that was being  
7 done by, in the Cuban packaging of Cohiba.

8 Q. And who are you getting those  
9 directions from?

10 A. Senior management.

11 Q. Did they say why?

12 A. They wanted a brand not associated  
13 with the Cuban Cohiba where there could be no  
14 confusion at all, that this was a totally  
15 different product from a totally different place.

16 Q. What was wrong with the box we looked  
17 at earlier, why didn't that fit that standard?

18 A. We didn't think it was a very good  
19 representation for a very super premium product.

20 Q. Was there any concern about that box  
21 not being radically different from the Cuban?

22 A. No, we just never planned on that box  
23 being used for the final product.

24 Q. Did you have any discussions about a  
25 desire by senior management that the final, the

1 Rano

2 A. I don't.

3 Q. Do you know what the target was for  
4 1999?

5 A. I don't recall what it was.

6 Q. Do you know if you were meeting the  
7 target for '99, whatever it was?

8 A. I left the company, so.

9 Q. You don't know if you were getting  
10 reports that it was above, below?

11 A. I think it was running behind. But I  
12 want to be clear, it doesn't mean it wound up  
13 behind the plan.

14 Q. I would need to ask someone else or  
15 look at documents?

16 A. Just look at documents.

17 Q. Let me show you what's been marked as  
18 Plaintiff's Exhibit 15. It's a February 23, 1997  
19 document from Mr. Geoghegan to distribution and  
20 listed, you're the second person there, Mr. Rano.

21 Do you recall seeing this memo from  
22 Mr. Geoghegan?

23 A. I don't recall it, but I'm sure, I  
24 know he did.

25 Q. This document is the first document

1                                   Rano  
2   in time I have other than documents dated 1993  
3   regarding the Cohiba launch.

4                                   And my first question is are you  
5   aware of any documents prior to February 23?

6                   A.     No, I'm not.

7                   Q.     Looking at this document, does it in  
8   any way refresh your recollection of when the  
9   events took place of the decision to do the launch  
10  at the RTDA?

11                  A.     I would say the decision would be  
12  some time right around, just some time in February  
13  or late January would be my assumption.

14                  Q.     Now, the document refers to other  
15  things being attached to it, or it says to look at  
16  the timetable, volume, activities, collateral,  
17  advertising, et cetera.

18                         Do you recall any other things being  
19  attached to it?

20                  A.     There would be nothing else. I don't  
21  think there would be anything else attached to  
22  this. This writer was asking for, for this  
23  information. He is asking this distribution list  
24  to look at these different activities and get back  
25  to him.

1 Rano

2 Q. And do you know if this document  
3 would have been in your files?

4 A. It would have been.

5 Q. And do you recall if you wrote  
6 anything on this document, like it would be your  
7 habit to write on the document and turn it back to  
8 Mr. Geoghegan?

9 A. In this particular case I had, I was  
10 giving direction to different people as to what we  
11 would have been looking for, so they would have  
12 been writing the document more likely than I  
13 would.

14 Q. Would it be fair to say you were the  
15 management person in charge of the Cohiba launch?

16 A. Yes.

17 Q. And Mr. Geoghegan reported to you?

18 A. Yes.

19 Q. Was he a subordinate of yours  
20 generally or just for this project?

21 A. No, he reported to me.

22 Q. And did he do work in both premiums  
23 and mass market?

24 A. Yes, he did.

25 Q. And did he report to you on his mass

1 Rano

2 A. Approximately four weeks, three weeks  
3 to four weeks.

4 Q. Is that the loose cigar aging  
5 requirement, is that the same thing?

6 A. That is a different process.

7 I need to go back to that previous  
8 bullet point. You have to remember those tobaccos  
9 have already been aged two to three years  
10 individually, then when you bring them together  
11 you age them as a unit, if you will. Then the  
12 loose cigar requirement for aging is after the  
13 cigar is made.

14 Q. Let me show you what has been marked  
15 as Plaintiff's Exhibit 16. This is a March 5,  
16 1997 document which Mr. Geoghegan identified as  
17 having prepared.

18 Do you recall seeing this document?

19 A. Yes.

20 Q. It would have been sent to you?

21 A. Yes, it would have.

22 Q. Under benefit it talks about "Cohiba  
23 gives you the same feeling of international style,  
24 self-assurance and rare cigar pleasure that gave  
25 Havana its mystique." Then it says "'50s Havana

1 Rano

2 updated."

3 Do you know why that reference to

4 Havana?

5 A. Only there was a reference point

6 there was some mystique in Havana in the timeframe

7 of the '50s. It was the time of Hemingway and

8 Copacabana, et cetera, et cetera, and we wanted to

9 capture that in a Caribbean setting.

10 Q. And then it says "Black is the  
11 primary color of the Cuba mystique and with silver  
12 and white accents, a slash of gold."

13 Where do those colors come from?

14 A. I believe Mr. Geoghegan was  
15 expressing some of his own feeling in that,  
16 although the black, we used this because it was a  
17 very strong masculine color.

18 Q. And the gold is, does that come from  
19 the Cuban?

20 A. I don't know where the gold came  
21 from. We didn't use gold.

22 Q. This is for the accessories I take  
23 it?

24 A. If you are talking about the last  
25 paragraph starting with four other items?

1 Rano

2 Q. Right.

3 A. It is talking about accessories, yes.

4 Q. Do these accessories ever happen?

5 A. The cigar holder happened, the lizard  
6 wallet happened, billfold, card case, the cigar  
7 holder, those items happened.

8 Q. And what was the color of the  
9 accessories?

10 A. Black lizard.

11 Q. Was there silver, white and gold?

12 A. No.

13 Q. Let me show you what was previously  
14 marked as Exhibit 18, and ask you if you recall  
15 seeing that document?

16 A. I'm sure I do.

17 Q. I have been trying to put this  
18 document together and there is something else at  
19 page 4, 5, 6, 10 and 11.

20 Do you know if it was part of the  
21 February 23 document?

22 A. I don't believe so. This, I would  
23 believe this comes from a, either a single  
24 document on its own or part of a overall marketing  
25 document, but it wouldn't have come from this

1 Rano

2 document right here.

3 Q. You have number 15? Yes, it's right  
4 here. That document has one, two.

5 A. No, it wouldn't have been part of  
6 this document.

7 Q. Do you know who prepared this  
8 document, the key assumptions and all of the other  
9 parts of it?

10 A. Who would have typed the document?

11 Q. Not, not who would have typed it, who  
12 would have prepared the content.

13 A. It would have been discussed in a  
14 group.

15 Q. Where it says "The prestige of the  
16 Cohiba brand name will transcend the Cuban country  
17 of origin in determining authenticity and value,"  
18 what does that mean?

19 A. I believe our intention was to  
20 separate it again further from the Cuban brand to  
21 give it its own authenticity of a Dominican cigar  
22 at a value that was very outstanding for the  
23 quality of cigar.

24 Q. When you say "The prestige of the  
25 Cohiba brand name," what prestige did your cigar



1 Rano

2 have in 1997?

3 A. What we were about to create for it,  
4 the recognition of the Cohiba name and what we  
5 were about to add to it, value added.

6 Q. When you say "The recognition of the  
7 Cohiba name," what do you mean?

8 A. I mean that the brand was known.

9 Q. The Cuban brand was known?

10 A. The brand Cohiba was known, yes.

11 Q. The Cuban brand Cohiba was known?

12 A. The Cuban Cohiba was known, yes.

13 Q. And that is what you referred to by  
14 the recognition of the name?

15 A. I would say that is probably correct.

16 Q. And then General Cigar was going to  
17 add value to that name for itself through its  
18 marketing and promotion?

19 A. General Cigar was going to add value  
20 to a separate and distinct product under that  
21 brand.

22 Q. Now, why would you refer to it as  
23 having a Cuban country origin if it is a Dominican  
24 cigar?

25 A. We would, we referred to it as a

1 Rano

2 Dominican cigar. Again, we wanted to separate it  
3 from the Cohiba, the Cuban Cohiba, which country  
4 of origin is Cuba. So we wanted to separate it  
5 from that, so we wanted to transcend that.

6 Q. Now, if you look at the next page,  
7 page 5?

8 A. Page 5, yes.

9 Q. It says "Leverage mystique of Cohiba  
10 name with comprehensive product line."

11 Whose mystique are you referring to?

12 A. We're referring there to the mystique  
13 of, the American public had regarding Cohiba.

14 Q. The Cuban Cohiba?

15 A. The Cuban Cohiba.

16 Q. Correct?

17 A. Correct.

18 Q. Now, if you look at the timetable,  
19 the first element?

20 A. Yes.

21 Q. It says "Develop blend and product,"  
22 March 15 due date, March 15, 1997. What is that  
23 entailing at this date?

24 A. I'm not sure why that is there, we  
25 already probably had a blend. What that meant

1 Rano

2 was -- let me see something here.

3 Q. There is no date on it other than  
4 1997?

5 A. I'm not sure what that means. I  
6 would have thought by that time we already found  
7 the cigar, so I don't know what that means.

8 This was an earlier document than the  
9 other one talking about having found, when I was  
10 talking about having found the cigar. This was  
11 one that talks about trying to develop a blend, so  
12 we were probably working on something.

13 Q. The first page is handwritten 1997?

14 A. Yes.

15 Q. Do you know when this document was  
16 created?

17 A. No.

18 Q. Then if you look at page 10?

19 A. Yes.

20 Q. Under Brand Strategies, the second  
21 one is "Leverage the mystique and scarcity of  
22 Cohiba brand cigars to related categories."

23 Again, are we referring to the Cuban  
24 mystique?

25 It is at the top.

1 Rano

2 A. Oh, right here.

3 Q. Yes. I was looking at the second  
4 one.

5 A. "Leverage the mystique and scarcity  
6 of Cohiba brand cigars to related categories."

7 Q. Yes.

8 A. I don't know what he is talking  
9 about.

10 Q. "He" is Geoghegan?

11 A. Yes.

12 Q. And would you agree with me that his  
13 strategy for style and mystique associates the  
14 General Cigar Cohiba with the Cuban Cohiba?

15 MS. DORE: Can I hear that, please.

16 (Record read.)

17 MS. DORE: If you know what  
18 Geoghegan meant.

19 A. Well, what he is saying with this, do  
20 you see where he says "Competition," he is saying  
21 under this one that the Cuban cigars are the  
22 competition for this new product including Cohiba,  
23 that is what he is talking about here. This is a  
24 grid, a matrix, okay, so that is what he is  
25 talking about.

1 Rano

2 Q. And the target audience?

3 A. Would have been whatever our demo  
4 said here for the U.S. Upscale.

5 Q. But under strategy for style and  
6 mystique, it says "Cuban mystique and legend"?

7 A. That is part of that strategy.

8 Q. Is to associate your cigar with the  
9 Cuban mystique?

10 A. That is one strategy that he is  
11 putting forward, correct.

12 Q. Do you recall having any discussions  
13 about this document?

14 A. I'm sure we did.

15 Q. Do you recall?

16 A. I don't recall what they were, but  
17 I'm sure we went through each one of these.

18 Q. Do you recall what was said about any  
19 of them?

20 A. I don't recall.

21 Q. And then if you look at the last page  
22 of this document, page 11, under Cohiba  
23 Advertising Strategy, the last one, Supporting  
24 Points, and then we go back to that similar, to  
25 the other, the March 5 document, in the last

1 Rano

2 sentence, "Black is the primary color of the  
3 Cohiba mystique, with silver and gray accents, a  
4 slash of yellow to relate it to its Cuba  
5 heritage."

6 I take it that is intended to refer  
7 to the yellow of the Cuban Cohiba packaging?

8 A. I would imagine that is what he is  
9 talking about.

10 Q. And do you know who prepared this  
11 document?

12 A. I believe it would be the same  
13 person.

14 Q. Mr. Geoghegan?

15 A. I believe so.

16 Q. Do you recall discussing with him or  
17 with others the use of the yellow color?

18 A. I'm sure we had discussions about it.

19 Q. What general heritage did the Cohiba  
20 cigar have?

21 A. I'm not sure how to answer that  
22 question.

23 Q. Why not?

24 A. Because heritage, just by its name it  
25 has some heritage.

1 Rano

2 Q. By the name Cohiba you mean?

3 A. Right, so there is a heritage to it.

4 Q. Because of its history of a Cuban  
5 cigar?

6 A. In this case, yes.

7 Q. What I don't understand, why a  
8 American company with a Dominican cigar would even  
9 think that a cigar had a Cuban heritage.

10 MS. DORE: Is that a question or  
11 just a statement of your feeling?

12 MR. GOLDSTEIN: No, it is a  
13 question.

14 MS. DORE: Could we have it in the  
15 form of a question, as opposed to a  
16 statement or an observation by you.

17 Q. Why would an American company with a  
18 Dominican cigar even think of that cigar as having  
19 a Cuban heritage?

20 A. I don't think we did any of that, of  
21 a cigar having a Cuban heritage.

22 Q. You think the name has a Cuban  
23 heritage; is that correct?

24 A. That's correct.

25 Q. Does General Cigar sell any cigars

1 Rano

2 other than the Cohiba that it claims uses Cuban  
3 seed, or that General Cigar views as using Cuban  
4 seed?

5 A. I think a number of our tobaccos, a  
6 number of tobaccos might be viewed that way. I  
7 don't recollect if they use any others.

8 Q. In any of its advertising does  
9 General Cigar advertise that any of its brands use  
10 Cuban seed?

11 A. I would have to refresh my memory and  
12 look at advertising.

13 Q. Do you recall any advertising by  
14 General Cigar of any of its cigars, other than the  
15 Cohiba, that said it was made from Cuban seed?

16 A. I think maybe Macanudo Maduro might  
17 make that claim, but I'm not sure.

18 Q. The whole line of Macanudos?

19 A. No, Macanudo Maduro.

20 Q. The whole line of Macanudos doesn't  
21 have any association with Cuba, there is no Cuban  
22 Macanudos, I believe you corrected me earlier?

23 A. That's correct.

24 Q. Let me show you what has been marked  
25 as Plaintiff's Exhibit 33. It is a document dated



1 Rano

2 May 13, 1997 from Mr. Dickson Farrington to Gary  
3 Krol, and there are several ccs, including you as  
4 the first person.

5 Do you recall seeing this document?

6 A. I'm sure I did see it.

7 Q. Do you know if Mr. Farrington created  
8 the entire document, you as the first person?

9 A. He technically created the document.  
10 He didn't necessarily create the, all the wording  
11 in it.

12 Q. Do you know who participated in the  
13 wording?

14 A. I would say the team who was working  
15 on Cohiba.

16 Q. So this would be a team document?

17 A. Yes. Different people came -- yes.

18 Q. And you were part of that team?

19 A. Yes.

20 Q. You were the head of the team?

21 A. As such, yes, I was head of the  
22 department.

23 Q. Above you was the president of the  
24 company and then the two Cullmans?

25 A. That's correct.

1 Rano

2 Q. Was Mr. Farrington a direct report to  
3 you?

4 A. He worked for Geoghegan.

5 Q. So he reported to Geoghegan and  
6 Geoghegan reported to you?

7 A. Yes.

8 Q. Had you hired Mr. Farrington?

9 A. No.

10 Q. Do you know who hired him?

11 A. Mr. Lillienfield.

12 Q. If we turn to page, the fourth page  
13 of the document, the one that is 4633 at the  
14 bottom, the author writes "Its Cuban cigar  
15 heritage and the near cult status of the Cohiba  
16 Cuban version will be a benefit to generate  
17 initial trial of the brand, and easy brand  
18 recognition, but not the main engine driving the  
19 brand."

20 Do you agree with that statement?

21 A. I would agree with the part that --  
22 yes.

23 Q. So the idea here is that recognition  
24 of the Cuban Cohiba will get customers in the  
25 door, generate initial trial of the brand?

1

Rano

2

A. It could help, yes.

3

Q. And so through that people will try  
the brand, but the idea would be that you would,  
for your advertising and marketing push you would  
drive the brand further?

7

A. And the quality of the product  
itself, the taste of the product.

9

Q. To have the marketing, advertising,  
the quality of product?

11

A. Yes.

12

Q. And then in the next sentence it says  
"Cohiba will have a fuller," and I guess a word is  
missing, "Cohiba will have a fuller" something "in  
keeping with consumer's perception of stronger  
Cuban taste."

17

Was the idea here to have a fuller  
flavor, a fuller taste because of the consumer  
perception that Cuban cigars have a stronger  
robust flavor?

21

A. That also was very important,  
consumer demand for stronger cigars in the  
marketplace at this time.

24

Q. Based on the work you had done you  
had concluded that consumers wanted a strong, that

1 Rano

2 Q. Less than 2 million?

3 A. I believe so.

4 Q. Less than 1-1/2 million?

5 A. It could have been right around  
6 there.

7 Q. Do you recall any retailer responses,  
8 disappointments to the reaction to the Cohiba?

9 A. Not at all.

10 Q. Nothing from any retailers about  
11 that?

12 A. No.

13 Q. Not from Dunhill?

14 A. Nothing that I heard from Dunhill,  
15 no.

16 Q. If you will look at the bottom of  
17 that page, Consumer Audience, and going over to  
18 the next page, he lists six consumer audiences.  
19 If you would just read through them.

20 A. Through the six consumer audiences?

21 Q. He says "Strategy: Target consumer  
22 audience," and the first one is consumer audience  
23 and he lists six different consumer groups.

24 Would you agree that those were your  
25 target consumer audience?

1 Rano

2 A. More or less, yes.

3 Q. And in the next competitive position,  
4 that first bullet, first point rather, "Cohiba  
5 brand name is powerful. Leverages Cuban mystique,  
6 positive brand name recognition, consumer  
7 expectation of high quality, intrinsic prestige  
8 associated with the brand equates to easy super  
9 premium price justification and increased consumer  
10 trial."

11 Would you agree with that statement?

12 A. Yes.

13 Q. Would you agree with me it is  
14 referring to the Cuban Cohiba?

15 A. Yes.

16 Q. In 1997, prior to your ad campaign,  
17 did General Cigar's Cohiba have any mystique?

18 A. The brand had whatever mystique the  
19 brand had, whether it was -- it just had whatever  
20 mystique the brand had.

21 Q. Are you aware of any mystique that  
22 your cigar had?

23 A. The cigar we are talking about that  
24 we put in the final package?

25 Q. No, in 1997 the General Cigar Cohiba,

1 Rano

2 MR. GOLDSTEIN: I know I'm using up  
3 my time, but I really have to run to the  
4 bathroom. I'll be back in two minutes.

5 (Recess taken.)

6 BY MR. GOLDSTEIN:

7 Q. I'm going to show you a document that  
8 has been marked as Plaintiff's Exhibit 32 and it  
9 is three documents, it is three pages of the same  
10 document typed. Two of the documents, the second  
11 and third pages have handwriting.

12 I'm going to ask you to look at the  
13 first page and tell me if you have seen that  
14 document before.

15 A. I'm sure I have.

16 Q. And you are aware that Mr. Geoghegan  
17 prepared this document?

18 A. Yes.

19 I want to clarify that. When you say  
20 prepared it, he was the -- he was not the sole  
21 writer of the document, he prepared the document.

22 Q. I mean his testimony was he prepared  
23 it.

24 When you say he is not the sole  
25 writer, what is your understanding?

1 Rano

2 A. That there is a group of, there is  
3 lots of thinking in there of other people besides  
4 Mr. Geoghegan's.

5 Q. This thinking includes your thinking?

6 A. In some cases, yes.

7 Q. And the thinking of Mr. -- was Mr.  
8 McNamara present at this time?

9 A. He wouldn't be present, but he would  
10 have seen draft copies, if there were any, and  
11 give us his comments.

12 Q. I think I spoke over you. He was  
13 still president at this time; is that correct?

14 A. In April of '97, yes.

15 Q. Under the last point, Reason Why, it  
16 says "The distinctive combination of smoothness  
17 and full rich tastes which are finally good enough  
18 to deliver the mystique of its legenday Cohiba  
19 name, as well as complete cigar pleasure that is  
20 singular and rare."

21 Would you agree that the mystique of  
22 its legendary Cohiba name is referring to the  
23 Cuban Cohiba?

24 A. Yes.

25 Q. Do you know whose handwriting that is

1 Rano

2 on the second page?

3 A. I don't.

4 Q. And the third page, it says written  
5 on the top "Final 4/17/97."

6 Do you know, first I guess do you  
7 know who wrote that?

8 A. I don't know whose handwriting that  
9 is.

10 Q. And, second, do you know what that  
11 refers to?

12 A. That meant that these, there are  
13 probably slight changes. If I read through them  
14 there would be slight word changes in these three  
15 advertising strategies, that would have meant that  
16 would have been the final advertising strategy.

17 Q. And was this indicating a sign-off by  
18 General Cigar, sign-off by the McCaffery firm, or  
19 not?

20 A. I would assume it was a sign-off by  
21 General Cigar Company.

22 Q. And do you recall that?

23 A. I don't recall that, no.

24 Q. And who would have done the signing  
25 off?



1 Rano

2 A. A group of people would have. I  
3 don't know whose writing that is, but a group of  
4 people would have signed off on it.

5 Q. And who would that have been?

6 A. Austin McNamara, myself, John  
7 Geoghegan. I don't know if anybody else would  
8 have signed off on it.

9 Q. And do you recall about this time  
10 signing off on the advertising strategy?

11 A. I don't recall what time it was that  
12 we signed off on it, but it could have been this  
13 time.

14 Q. You don't have a different  
15 recollection that no, this isn't right, we signed  
16 off on it some other time?

17 A. I don't have a different  
18 recollection.

19 MR. GOLDSTEIN: Can we mark this  
20 document.

21 (Plaintiff's Exhibit 46, document  
22 bearing Bates numbers RA 0031 through 0033,  
23 marked for identification, as of this  
24 date.)

25 Q. I'm showing you a document that came

1 Rano

2 out of the Rubenstein Associates, Rubenstein &  
3 Associates files from Evan Cooper to you dated  
4 April 7, 1997. The second and third pages are  
5 completely redacted, the first page is partially  
6 redacted.

7 It refers to a meeting with you and a  
8 development of the following plan, and then the  
9 first bullet is "Supporting the launch of the  
10 Cohiba brand should it be introduced later this  
11 year. Publicity in connection with the possible  
12 Cohiba launch will be covered in a subsequent  
13 plan."

14 Do you recall meeting with Mr.  
15 Cooper?

16 A. Yes, I do.

17 Q. And does this sound or seem to you  
18 like this would refer to the initial meeting you  
19 had with him?

20 A. Yes.

21 Q. Do you recall discussing with him the  
22 launch effort for the Cohiba?

23 A. Yes..

24 Q. Do you recall providing him with  
25 information on the background of the General Cigar

1 Rano

2 Q. Were they given any guidance on how  
3 they should handle the media in terms of inquiries  
4 about the Cuban Cohiba?

5 A. I don't recall.

6 Q. Were they told anything about General  
7 Cigar strategy to dissociate or associate  
8 themselves with the Cuban Cohiba?

9 A. They would have been briefed at  
10 meetings we had at our agency, at our advertising  
11 agency which would have discussed that.

12 Q. Who did you meet with beside Mr.  
13 Cooper, if anyone?

14 A. He had a lady who was working with  
15 him. I don't, I can't remember her name.

16 Q. Do you know if you would have kept  
17 this memo in your files?

18 A. I would have kept it in my files.

19 Q. Do you recall being present for the  
20 research, consumer research or consumer testing in  
21 Chicago in March?

22 A. I don't recall if I was or not.

23 Q. Let me give you I guess a couple of  
24 documents to look at. I'm giving you three  
25 documents that have been marked as Plaintiff's

1 Rano

2 Exhibits 19, 20 and 21 based on prior testimony,  
3 and the nature of the documents, it is my  
4 understanding these refer to this Chicago research  
5 that took place on March 18.

6 I just ask you to spend a minute  
7 looking, or however long you want, but if you  
8 recall being present for any of this research in  
9 Chicago.

10 A. I don't think I was present. If I  
11 was present I would have received the feedback  
12 from it.

13 Q. The first one is a memo to you, Mr.  
14 Geoghegan and Mr. Farrington from Amy Lineberger  
15 dated March 12, and it says "Please find a memo  
16 from Lois Coleman." And it says, the memo  
17 addresses the concern that John Rano has about  
18 projectability, the information will get to the  
19 real world.

20 Do you recall any such discussions?

21 A. I have a vague recollection of it.

22 Q. Is this a concern you had with all  
23 sort of focus group or testing?

24 A. You always have that concern. I  
25 don't know if you have ever been to a focus group,

1 Rano

2 but you always have that concern. Here my concern  
3 was big, I had a larger concern than normal.

4 Q. Why was that?

5 A. I felt -- I wasn't sure that the  
6 people who were responding, they were possibly  
7 going to respond to what they do about Cohibas  
8 manufactured in Cuba. Some may have never smoked  
9 them, some may, perhaps most didn't. Some may  
10 have only had hearsay and they would have been  
11 influenced by what they heard or what they said,  
12 so it wouldn't necessarily trans -- be  
13 translatable to us to use as marketing data.

14 Q. So was part of the research,  
15 particularly to design, to learn about what these  
16 people thought about the Cuban Cohiba?

17 A. No, it wasn't. That is what was part  
18 of the problem, it wasn't designed for that at  
19 all. They felt whatever they were giving us might  
20 come from that experience or that information that  
21 they had gathered somewhere.

22 Q. Did you have that concern when you  
23 did that research with Partagas?

24 A. No.

25 Q. Why not?

1 Rano

2 A. Because the brand is so big in the  
3 U.S. that people were aware of it.

4 Q. Have you done market research with  
5 other brands that were both U.S. and a Cuban  
6 version where you had this concern?

7 A. We have done market research with  
8 Bolivar, yes.

9 Q. And you had a similar concern there?

10 A. Yes.

11 Q. And what your concern is is that the  
12 name, is that the recognition or knowledge of the  
13 Cuban cigar will distort their opinions or a  
14 picture of the cigar that is being tested?

15 A. I don't know if distort is right.  
16 Relevance, there might not be any relevance that  
17 you could, that is transferrable from one to the  
18 other. It is perhaps more my concern.

19 Q. The memo that is attached to Exhibit  
20 20 from Lois Coleman to Miss Lineberger, it says  
21 "What we can get from the qualitative is current  
22 brand perception and breadth of brand halo for the  
23 Cuban Cohiba versus other brands of cigars, Cuban  
24 and otherwise."

25 Do you know what the term "breadth of

1 Rano

2 brand halo" means?

3 A. I believe I do.

4 Q. What is that?

5 A. It is how much a brand such as  
6 Montecristo coming from Cuba has on uplifting or  
7 deflating the entire range of products coming out  
8 of Cuba, for example.

9 Q. So you were wondering how far the  
10 breadth of Cohiba brand halo, Cohiba brand  
11 extended as far as the Cuban products in general  
12 or over the Cohiba brand halo?

13 A. Let me just read this.

14 Okay. If you would give me the  
15 question again, please.

16 Q. Maybe she better read it back, I have  
17 no idea what it was.

18 (Record read.)

19 THE WITNESS: Would you read that  
20 one more time, please.

21 (Record read.)

22 A. I'm not sure I understand the  
23 question.

24 Q. My question was were you looking to  
25 learn how far the breadth of the Cohiba brand halo

1 Rano

2 extended with regard to the Cohiba brand cigars,  
3 or were you looking for how far the halo extended  
4 with respect to other Cuban products?

5 A. I don't recall.

6 Q. Would there have been any reason you  
7 would have been interested in how far it extended  
8 over other Cuban products?

9 A. There could have been some, there  
10 could have been some, something deduced from that  
11 perhaps. I don't recall at the time what we were  
12 looking for.

13 Q. Does it seem more likely you were  
14 wondering how far the brand halo would extend over  
15 your Cohiba?

16 A. It could be, I'm not sure.

17 Q. Would you put a value judgment on it?  
18 Would you say it would be good or bad if a halo  
19 extended or didn't extend over your brand, over  
20 your Cohiba?

21 A. I think from research we deduced it  
22 didn't matter.

23 Q. Let me ask you -- well, let me ask  
24 you one question on Plaintiff's Exhibit 19. And  
25 if you go to the last -- this is, I guess the



1 Rano

2 first question is have you seen this document  
3 before?

4 A. I'm sure I did.

5 Q. And you would have, as part of your  
6 work would you have reviewed this document?

7 A. Yes.

8 Q. And in the second paragraph it says  
9 "In attendance from General Cigar Company were  
10 John Rano and Amy Lineberger."

11 Does that refresh your recollection  
12 that you were there or not?

13 A. I was there.

14 Q. Okay. If you would look at the last  
15 paragraph, it says "Smokers clearly like the  
16 tobacco blend we tested."

17 A. What page?

18 Q. The very last page, the last  
19 paragraph under concluding thoughts. It says  
20 "Smokers clearly like the tobacco blend we tested.  
21 However, there is a widespread perception that  
22 Cohiba is a very robust cigar and this blend is  
23 not perceived to be strong."

24 The first question is did you have a  
25 reaction to that statement?

1 Rano

2 A. I might have at the time.

3 Q. Do you recall being disappointed or  
4 upset with the consumer reaction that it was not  
5 particularly robust, or that consumers didn't see  
6 it that way?

7 A. I think I would have been. But if  
8 this is the same blend we are talking about, and I  
9 assume it is, I don't know that for a fact because  
10 we might have made adjustments to it. I don't  
11 know because there is no way of me knowing here,  
12 making a cross-reference.

13 I would have, there had to be some  
14 other redeeming factors to the cigar that I saw at  
15 that time to make, we want to go ahead.

16 Q. Do you recall making any changes to  
17 the cigar as a result of this?

18 A. I can't recall. There could have  
19 been, but I just don't recall.

20 Q. Do you know why there would have been  
21 a widespread perception that Cohiba is a very  
22 robust cigar?

23 A. I think it is just a given in the  
24 cigar world that Cuba cigars are, whether the  
25 people smoked them or not, are perceived to be

1 Rano

2 very strong cigars.

3 Q. So the concern being expressed by the  
4 writer in the last sentence of that paragraph is  
5 that this cigar would not meet the expectations of  
6 the consumer; is that correct?

7 A. That's what this writer was saying,  
8 yes.

9 Q. And looking at this now, does this in  
10 any way refresh your recollection one way or the  
11 other whether changes were made?

12 A. It doesn't, it doesn't refresh my  
13 memory.

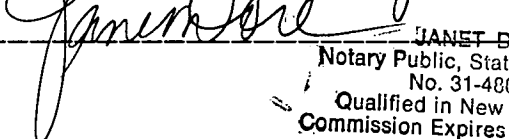
14 MR. GOLDSTEIN: I have to let you  
15 go, it is 4:30. We are obviously not done  
16 and we'll have to schedule something, and  
17 maybe I'll have some more documents the  
18 next time.

19 (Time noted: 4:30 p.m.)

20  
21   
22 JOHN RANO

23 Subscribed and sworn to before me

24 this 4th day of August 2000.

25   
JANET DORE  
Notary Public, State of New York  
No. 31-4807227  
Qualified in New York County  
Commission Expires March 30, 1986

8/31/02

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C E R T I F I C A T E

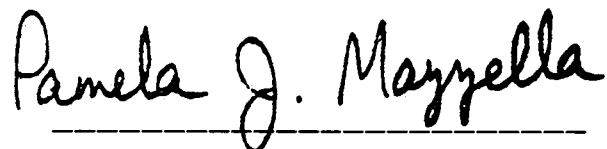
STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

I, PAMELA J. MAZZELLA, a Registered  
Professional Reporter and Notary Public  
within and for the State of New York, do  
hereby certify:

That JOHN RANO, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such deposition  
is a true record of the testimony given by  
such witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage; and that I am in no  
way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 23rd day of May, 2000.



PAMELA J. MAZZELLA, RPR

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-----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
John Rano	Mr. Goldstein	5

INSTRUCTIONS NOT TO ANSWER: 55, 193

-----E X H I B I T S-----  
PLAINTIFF'S FOR I.D.

42	Document bearing Bates numbers P 3136 through 3143	43
43	Document bearing Bates numbers GC 004870 and 004869	73
44	Document bearing Bates numbers GC 000121 through 000128	74
45	Document bearing Bates numbers GC 001074 through 001088	155
46	Document bearing Bates numbers RA 0031 through 0033	222

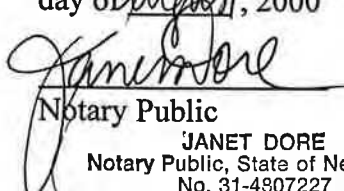
**DEPOSITION OF JOHN RANO**  
**New York, New York**  
**Tuesday, May 23, 2000**

**ERRATA SHEET**

PAGE	LINE	CHANGE FROM:	CHANGE TO:
31	4	Canari	Canaria
37	7 and 9	Backner	Bachner
38	8	didn't	don't
40	7	Burg	Burgh
41	12	was	were
42	22	from	, because
42	23	I'm looking at because they are not original here, is the answer is yes.	I'm looking at are not originals, is, the answer is, yes.
54	22	that we could,	that we could not use,
71	21	1998?	1988?
84	10	nowhere else	elsewhere
101	21	national,	national distribution,
101	23	location of their store	locations of their stores
104	2	premier	premium
107	1	ban	band
109	11	not marketing, but	marketing and
119	8	Partagas, some	Partagas, and some
120	19	gotten --	gotten that --
129	16	off, but not, and they	off, and they
129	17 - 18	finally did the launch of Cigar Aficionado. The	finally did. The launch of Cigar Afficionado, the
133	7	on	to
143	7	relevant	relative
148	10	date	interview
154	4	shove	shelve
157	11	Margaret	Marvin
161	14	Canari	Canaria d'Oro
169	22	Yes	I can't recall
213	4	there was a minimal.	it was minimal.

Sworn to before me this 4th  
day of August, 2000

  
John Rano

  
Notary Public

JANET DORE  
Notary Public, State of New York  
No. 31-4907227

560402 Qualified in New York County  
Commission Expires March 30, 1996

8/31/02

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

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EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
-----	X	

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition Transcript of John Rano,  
designated under Fed. R. Civ. P. 30(b)(6), dated July 19, 2000**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVue Nos. 138, 136, 135, 132, 91 and 89.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
EMPRESA CUBANA DEL TABACO, d.b.a.  
CUBATABACO,

ORIGINAL

Plaintiff,

97 Civ.  
8399 (RWS)

vs.

CULBRO CORPORATION and GENERAL  
CIGAR CO., INC.,

Defendants.  
-----X

VOLUME II DEPOSITION OF JOHN M. RANO

New York, New York

Wednesday, July 19, 2000

Reported by:

ANNETTE ARLEQUIN

CSR NO. 1450

JOB NO. 110744

  
**ESQUIRE**<sup>™</sup>  
DEPOSITION SERVICES

216 East 45th Street, 8th Floor  
New York, NY 10017-3304  
212.687.8010 • 800.662.3287  
Fax 212.557.5972

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July 19, 2000

10:35 a.m.

Volume II Rule 30(B)(6) continued  
deposition of JOHN M. RANO, held at the  
offices of RABINOWITZ, BOUDIN, STANDARD,  
KRINSKY & LIEBERMAN, P.C., 740 Broadway at  
Astoria Place, 5th Floor, New York, New  
York, pursuant to Notice, before ANNETTE  
ARLEQUIN, a Certified Shorthand Reporter and  
a Notary Public of the State of New York.

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A P P E A R A N C E S :

RABINOWITZ, BOUDIN, STANDARD, KRINSKY &  
LIEBERMAN, P.C.

Attorneys for Plaintiff

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New York, New York 10003-9518

BY: DAVID B. GOLDSTEIN, ESQ.

MORGAN & FINNEGAN, LLP

Attorneys for Defendants

345 Park Avenue

New York, New York 10154-0053

BY: JANET DORE, ESQ.

1

2

J O H N M. R A N O, residing at 1601 Third

3

Avenue, New York, New York, called as a

4

witness, having been duly sworn by a Notary

5

Public, was examined and testified as

6

follows:

7

EXAMINATION BY

8

MR. GOLDSTEIN:

9

Q. Mr. Rano, you've been reminded that

10

you're still under oath.

11

A. That's correct.

12

Q. Did you review the transcript of your

13

prior deposition?

14

A. Briefly.

15

Q. And it was provided to you by counsel?

16

A. Yes.

17

Q. Have you discussed your deposition,

18

your prior deposition, with anyone other than

19

counsel?

20

A. No.

21

Q. Have you reviewed any additional

22

documents other than what you reviewed prior to

23

your first deposition?

24

A. Yes.

25

Q. Okay. Generally what types of

1 Rano

2 and the articles?

3 MS. DORE: Uh-huh.

4 BY MR. GOLDSTEIN:

5 Q. Mr. Rano, I'm putting on the table  
6 some items that counsel for General Cigar has in  
7 her possession, which were represented to me as  
8 provided to her by Clifford Bachner of Bachner &  
9 Company. And we reviewed these items with  
10 Mr. Bachner at his deposition, and those, color  
11 copies of these items are exhibits in the  
12 deposition record and we'll take a look either at  
13 the original items or at the color copies. They  
14 include a wood box with the Indian head and the  
15 word "Cohiba," "La Habana, Cuba," "Hecho en  
16 Cuba," made in Cuba. They also include a small,  
17 full-color brochure, some labels, some of which  
18 have the word "Cohiba" on them, some of which  
19 don't, a box that has the word "Cohiba" and we  
20 have those pictures. I'm going to ask you some  
21 questions about these objects and the items.

22 Do you recall having an initial  
23 meeting with Mr. Bachner, Cliff Bachner of  
24 Bachner & Company, regarding the creating a  
25 package design for the General Cigar Cohiba?

1 Rano

2 A. Yes.

3 Q. Okay. And do you recall when that  
4 was?

5 A. In the early '90s.

6 Q. And do you recall at that initial  
7 meeting providing him with certain objects?

8 A. I don't recall specifically this day  
9 what they were. I believe that I supplied him  
10 with the -- with a box and some, maybe some other  
11 packaging items.

12 Q. And Mr. Bachner was in possession of  
13 this wooden Cohiba box, which is photocopies of  
14 that are Exhibit 113 in this case.

15 Do you recall that you gave him this  
16 box?

17 A. I probably did.

18 Q. Okay. The one where it says "La  
19 Habana, Cuba, "Hecho en Cuba," made in Cuba?

20 A. Yes.

21 Q. Do you recall giving him that?

22 A. To the best of my knowledge, yes.

23 Q. Do you know where you got that box  
24 from?

25 A. I don't.



Rano

1

2

Q. What's that?

3

A. I don't.

4

Q. You don't know where you got the box

5

from?

6

A. No.

7

Q. Did someone at General Cigar give you

8

the box?

9

A. I couldn't say for sure.

10

Q. Do you recall that when you got the

11

box, whether it had the Cuban cigars in as well?

12

A. I don't recall any cigars.

13

Q. Can you recall when the meeting was

14

better than the early '90s?

15

A. '92.

16

Q. September of '92?

17

A. I believe documents show that, so I

18

would guess it would be something. I don't

19

recall it unless I saw a document, yes.

20

Q. When you say you saw a document, you

21

looked at the invoices?

22

A. No. No.

23

Q. Okay. What document are you referring

24

to?

25

A. Oh, wait a minute. The invoices,

1 Rano

2 yes. I looked at the invoices.

3 Q. From Bachner to you?

4 A. Yes. To me, yes.

5 Q. And you recall the first invoice was  
6 October of '92?

7 A. If that's the date, yes.

8 Q. Okay. And you recall that you met  
9 with him some few weeks before that invoice?

10 A. A period of time before that invoice,  
11 yes.

12 Q. Do you agree it's a few weeks?

13 A. I don't -- no, I don't agree it's a  
14 few weeks because I don't know.

15 Q. You don't recall?

16 A. Right.

17 Q. Do you recall what else you gave to  
18 Mr. Bachner at that initial meeting?

19 A. I don't -- I think I gave him that.

20 Q. When you say "that," what are you  
21 pointing to?

22 A. This, I'm pointing to an individual  
23 cigar box.

24 Q. Okay. And it says "Panatelas"?

25 A. Panatelas on it, yes.

1 Rano

2 Q. And does it have the word "Cohiba" on  
3 it?

4 A. It does.

5 Q. Okay. And that's Plaintiffs' Exhibit  
6 111, that was photocopies of that box?

7 A. Yes.

8 Q. And it has a little Cubatabaco logo  
9 and a leaf at the bottom, that one tip?

10 A. Yes, I see that, yeah.

11 Q. Do you recall also giving him this  
12 small brochure, which the cover is "Cohiba Cigar  
13 Divan"?

14 A. Again, I don't recall specifically  
15 giving it to him, but I probably did.

16 Q. Okay. And that document is marked as  
17 Plaintiffs' Exhibit 115?

18 A. Okay.

19 Q. Do you see that?

20 A. (Witness nodding).

21 Q. And do you also recall giving him  
22 this, "The Six Cigars of Cohiba" piece of paper?

23 A. No, I don't recall giving him that.

24 Q. Do you know where that came from?

25 A. Well, it came from Cigar Aficionado

1 Rano

2 obviously.

3 Q. And do you know what issue of Cigar  
4 Aficionado?

5 A. No.

6 Q. Do you recall if that's from the  
7 premier issue?

8 A. I don't recall that.

9 Q. Do you have a recollection of  
10 providing Mr. Bachner with the document that is  
11 part of Exhibit 116 labeled B-26 in this case?

12 A. It's this document right here  
13 (indicating)?

14 Q. Yes.

15 A. And the question was?

16 Q. Do you recall providing that to  
17 Mr. Bachner?

18 A. No, I don't.

19 Q. Do you have any reason to doubt his  
20 testimony that you gave it to him?

21 A. No, I don't.

22 Q. I'm showing you the premier issue of  
23 Cigar Aficionado. It's dated autumn 1992 and we  
24 previously marked it as Plaintiff's Exhibit 3,  
25 and I'm showing you page 45.

1 Rano

2 If you look at page 45 and page B-26,  
3 would you agree that except for the missing  
4 cigars and the bottom text that it's identical?

5 A. Yes.

6 Q. Okay. Do you know what -- do you have  
7 any knowledge of how B-26 was made without the --  
8 in other words, the text is the same, the words  
9 "The Six Cigars of Cohiba," and then the  
10 labeling of the various cigars and the sizes are  
11 identical and in the same location on the pages,  
12 and then the little Cigar Aficionado box.

13 Do you have any knowledge of this B-26  
14 being created without the cigars?

15 A. I don't.

16 Q. Do you know if this was something  
17 provided to you or to General Cigar by Cigar  
18 Aficionado prior to the publication of the  
19 magazine?

20 A. No, it wasn't. No.

21 Q. You know it was not?

22 A. I know it was -- I don't believe it  
23 was.

24 Q. Do you recall General Cigar doing any  
25 whiteouts of the cigars for any reason?

1 Rano

2 A. No, I don't.

3 Q. If you look under the Cigar Aficionado  
4 box on B-26, there's a photograph by or  
5 photography by Dan Wagner and that's crossed out,  
6 hand crossed out?

7 A. Yes.

8 Q. Okay. If you look in the Cigar  
9 Aficionado magazine, there's no such indication?

10 A. I see that.

11 Q. Do you know if General Cigar sent this  
12 page of the magazine out to be photographed by  
13 somebody and to have him redact or white out the  
14 cigars?

15 A. Not that I can remember.

16 Q. Okay. Do you know who Dan Wagner is?

17 A. I don't.

18 Q. Do you recall using a photographer by  
19 the name of Dan Wagner?

20 A. No.

21 Q. But it's your testimony that this was  
22 not a preliminary page provided to General Cigar  
23 by Cigar Aficionado?

24 A. To the best of my knowledge.

25 Q. Do you know where you got Plaintiffs'

1 Rano

2 Exhibit 111, the little Panatelas box?

3 A. No.

4 Q. Do you know where you got Plaintiff's  
5 115, this full-color brochure?

6 A. I don't remember.

7 Q. I'm showing you a little small piece  
8 of light wood with the word "Cohiba" and what  
9 I'll call the Indian head on top, which we  
10 previously marked as Plaintiff's 117.

11 Do you recall providing that to  
12 Mr. Bachner?

13 A. If his testimony says that it was, I  
14 agree with it.

15 Q. Do you know where you got that from?

16 A. I don't.

17 Q. I'm showing you -- I want to show you  
18 Plaintiffs' Exhibit 116, particularly the second  
19 page, B-25. On the top is "For attention John  
20 Rano" and then there's a cigar band, black and  
21 white copy of a cigar band.

22 Do you know where you -- have you seen  
23 that document before?

24 A. Yes.

25 Q. Okay. And where did you see that?

1 Rano

2 A. At counsel's office.

3 Q. In preparation for this deposition?

4 A. Yes.

5 Q. Do you recall receiving "For attention  
6 John Rano"?

7 A. I don't recall it.

8 Q. Okay. Do you understand that that  
9 black and white copy is of the Cuban Cohiba cigar  
10 band?

11 A. It looks to be such, yes.

12 Q. Do you recall somebody from General  
13 Cigar providing you with that?

14 A. I can tell by the handwriting.

15 Q. Whose handwriting is it?

16 A. I believe it's Alfons Mayer.

17 Q. You believe it's Mr. Mayer's  
18 handwriting?

19 A. Yes.

20 Q. And you believe he provided you with  
21 that?

22 A. Yes.

23 Q. Okay. Do you know why he did?

24 A. I may have asked him for it.

25 Q. And then do you recall this initial



1 Rano

2 meeting with Mr. Bachner, providing him with  
3 Cuban Cohiba cigar bands?

4 A. Again, I don't recall that.

5 Q. If you look in the brochure, in the  
6 middle on what's been Plaintiff's 115, just the  
7 brochure, B-36 on mine, which is a Picasso  
8 painting or drawing, or it's a replica of a  
9 Picasso drawing, and in front are various company  
10 Cohiba boxes and it's Cohiba cigars, you  
11 understand that that is the Cuban Cohiba that  
12 you're looking at there?

13 A. Yes.

14 Q. And you understand that those cigars  
15 have the Cuban Cohiba cigar band around them?

16 A. Yes.

17 Q. Why did you provide this packaging  
18 material of the Cuban Cohiba to Mr. Bachner?

19 A. To give him a sense of what was in  
20 the -- what the packaging looked liked.

21 Q. The packaging of the Cuban Cohiba?

22 A. Yes.

23 Q. Why?

24 A. To give him a starting point, a  
25 reference point for design work.

1 Rano

2 Q. What did the -- did you want him to  
3 use the Cuban Cohiba packaging as the starting  
4 point?

5 A. Yes.

6 Q. Why?

7 A. At the time, I believed that General  
8 Cigar had rights to not only the name, but  
9 everything else associated with Cohiba, being  
10 packaging.

11 Q. Had you had discussions -- let me back  
12 up a little bit.

13 Before you went to Mr. Bachner  
14 regarding the Cohiba, had you had discussions  
15 with anybody at General Cigar about preparing a  
16 package?

17 A. Only that I would have been asked to  
18 look into it.

19 Q. By whom?

20 A. I don't, I don't recall.

21 Q. Well, how many people were above you  
22 at this point?

23 A. One.

24 Q. Mr. Burgh?

25 A. Yes.

1 Rano

2 Q. Okay. Do you recall if he was the one  
3 that asked you to do it?

4 A. He could have been. I don't recall.

5 Q. Do you recall if it was one of the  
6 Cullmans who asked you?

7 A. It could have been -- Edgar junior  
8 could have asked me also.

9 Q. Even if you don't remember who it was,  
10 do you remember what the person at General Cigar  
11 asked you to do?

12 A. In direct words.

13 Q. Direct words, paraphrase, summary.  
14 The best you can do.

15 A. To the best of my recollection, it  
16 would have been, you know, let's start -- let's  
17 look at Cohiba, let's start working on it, there  
18 could be a chance to launch the product.

19 Q. Do you know how long this was before  
20 you met with Mr. Bachner?

21 A. I don't, but it would have been a  
22 very -- it would have been a short period of time  
23 between.

24 Q. Do you recall that this occurred after  
25 the publication of the premier issue of Cigar

1 Rano

2 Aficionado?

3 A. I don't recall that.

4 Q. Do you recall any discussions  
5 regarding launching the Cohiba in '92 or '93 in  
6 relationship to the publication of the premier  
7 issue of Cigar Aficionado?

8 A. No.

9 Q. So you provided this material to  
10 Mr. Bachner and you told him you wanted him to  
11 use the Cuban Cohiba packaging as his starting  
12 point?

13 A. That's correct. To the best of my  
14 recollection.

15 Q. And when you say "starting point," did  
16 you give him any other instructions?

17 A. There were two components of the  
18 packaging that we told him not to use.

19 Q. What did you tell him not to use?

20 A. The Habanos logo, which was the  
21 horizontal tobacco leaf, and obviously he  
22 couldn't use La Habana, Cuba.

23 Q. So you told him he can't say Havana,  
24 Cuba because it's not from Havana, Cuba?

25 A. That's correct.

1 Rano

2 Q. Okay. And you told him not to use, at  
3 that time it was the Cubatabaco leaf?

4 A. That's correct, the horizontal tobacco  
5 leaf.

6 Q. Okay. When you say that, you're  
7 talking about the leaf at the tip of the  
8 Panatelas box, at the end of the Panatelas box?

9 A. In this case, yes.

10 Q. Okay. And that's a -- a copy of that  
11 is, the reason I do that is so that the record is  
12 clear what we're talking about, Exhibit 111,  
13 B-45?

14 A. That's correct.

15 Q. And do you recall Mr. Bachner  
16 providing you with -- let me back up.

17 Do you recall telling him anything  
18 else in terms of what you wanted to do, what you  
19 wanted him to do in terms of creating a package?

20 A. No. I would have -- no.

21 Q. And then do you recall soon after  
22 meeting with him, receiving some materials from  
23 him?

24 A. I would have received some materials,  
25 yes.

1 Rano

2 Q. Do you recall?

3 A. I believe I -- specifically not the  
4 day and all that, but I do recall getting some,  
5 yes.

6 Q. Okay. And do you recall that it was  
7 within a couple of weeks of your initial meeting?

8 A. That I don't recall.

9 Q. Do you have any reason to doubt that  
10 it was within two or three weeks of your initial  
11 meeting?

12 A. Yes.

13 Q. Why is that?

14 A. It all depended on how busy  
15 Mr. Bachner was with other projects, how much  
16 pressure we put on him to deliver quickly. Those  
17 types of things.

18 Q. Do you have any reason to doubt his  
19 testimony that it took him somewhere between  
20 three days and two weeks to produce his initial  
21 set of materials to you?

22 A. I don't have any.

23 Q. Okay. I'm showing you a box with an  
24 Indian head logo and the word "Cohiba" with the  
25 little R, and no other writing on the outside of

1 Rano

2 the box, which we've marked or created a color  
3 copy as Plaintiff's 114.

4 Do you see that?

5 A. Yes, I do.

6 Q. Okay. Do you recall getting that from  
7 Mr. Bachner?

8 A. Yes.

9 Q. In the box is, there are four white,  
10 single holder cigars without any labels, and one  
11 Esplendidos label.

12 Do you see that?

13 A. Yes, I do.

14 Q. With the gold coloring and the word  
15 "Cohiba" and the black and white checker?

16 A. I see it.

17 Q. And that we created as Plaintiff's  
18 112.

19 Do you see that?

20 A. Yes, I do.

21 Q. Do you recall receiving that from  
22 Mr. Bachner?

23 A. Yes.

24 Q. And do you recall receiving several  
25 Cohiba labels from Mr. Bachner at this time?

1 Rano

2 I have a few of them here on the  
3 table.

4 Do you recall receiving these?

5 A. What time frame are you talking  
6 about?

7 Q. September 1992, perhaps early October  
8 1992.

9 A. No.

10 Q. Do you recall receiving them at a  
11 later time?

12 A. Yes.

13 Q. And the labels I just showed you are,  
14 I believe they're Plaintiff's 118.

15 Do you agree with that?

16 A. I believe they are.

17 Q. Okay. You recall receiving them at a  
18 subsequent time from Mr. Bachner?

19 A. Yes.

20 Q. Do you recall receiving a wooden box  
21 from Mr. Bachner at this time in September or  
22 October of '92?

23 A. I don't recall specifically, no.

24 Q. In his first invoice to you, just  
25 Plaintiff's Exhibit 110, the first page of



1 Rano

2 Plaintiff's Exhibit 110, a document labeled  
3 B 0001, it's dated 5 October of 1992, and if you  
4 look at the first entry it says, "Wooden cigar  
5 box, exterior and interior, including inside  
6 label, \$475."

7 Do you recall --

8 A. I would have received it.

9 Q. -- receiving the box?

10 A. I would have received it.

11 Q. Do you recall what that box looked  
12 like?

13 A. I believe it had -- it was -- to the  
14 best of my recollection, it was a wooden cigar  
15 box with labels on the outside of the lid and on  
16 the inside of the lid.

17 Q. When you say "labels," labels similar  
18 to what we looked at which are as part of  
19 Plaintiffs' Exhibit 18?

20 A. I don't recall --

21 Q. 118. Excuse me.

22 A. I don't recall what the label would  
23 have -- the specific label looked liked on that  
24 specific box.

25 Q. Were they of that size?

1 Rano

2 instructions on creating the box other than to  
3 create one?

4 A. I don't recall any.

5 Q. Do you recall if the box -- do you  
6 recall that we looked in your earlier first  
7 deposition, we showed some color copies of the  
8 box that was used at Dunhill during the period  
9 '92 through '96 or '97?

10 A. Yes, I recall that.

11 Q. Do you know who created that box?

12 A. It would have been Mr. Bachner, I  
13 believe.

14 Let me clarify that. He would have  
15 produced the graphics.

16 Q. When say "produced the graphics," what  
17 do you mean?

18 A. The lettering, the design, not the box  
19 itself.

20 Q. Is it your recollection that the box  
21 he created for you that's reflected in that  
22 invoice is not the box that was used?

23 A. I'm sorry. I don't understand the  
24 question.

25 Q. He created, according to the invoice

1 Rano

2 and your recollection, he created a wooden cigar  
3 box and provided it to you, according to this  
4 invoice that we just looked at.

5 A. And what's the date of that invoice  
6 again?

7 Q. October 5th, 1992.

8 A. Okay.

9 Q. Sometime in '92 or '93, General Cigar  
10 began to sell its cigars, its Cohiba cigar,  
11 through Dunhill in a wooden box.

12 A. That's correct.

13 Q. Do you know if the wooden box that he  
14 gave to you was the prototype for the box that  
15 was used for the sales through Dunhill?

16 A. No, it wasn't.

17 Q. Do you recall what the differences  
18 were?

19 A. I don't recall.

20 Q. But it's your testimony that he did  
21 the graphical work that became the lettering on  
22 the box that was sold to Dunhill?

23 A. Yes.

24 Q. I believe we marked this, we marked  
25 this at your deposition. We marked at your

1 Rano

2 deposition as Plaintiff's 42, color copies of the  
3 box I just put in front of you. I'll let you see  
4 it.

5 (Witness reviewing.)

6 Q. And you recall that you said that this  
7 was of the type of box that was sold through  
8 Dunhill?

9 A. Yes.

10 Q. If Mr. Bachner did not create the  
11 lettering for the box, do you know who did?

12 A. My testimony is that he did create the  
13 lettering for the box.

14 Q. Okay. And if -- do you have any  
15 recollection -- I'm trying to not change your  
16 recollection. I'm just asking you if he didn't  
17 do it, do you have any recollection of someone  
18 else doing it?

19 A. No.

20 Q. We had previously marked at an earlier  
21 deposition, Plaintiff's Exhibit 2, which was a  
22 trademark application of General Cigar to the  
23 Patent and Trademarks Office of December 30th,  
24 1992 starting with page GC 6276.

25 On the last page, 6281, is the word

1

Rano

2

A. Just repeat the question, please. I'd

3

like to clarify it.

4

Q. Did you tell Mr. Bachner anything

5

other than to use the Cuban Cohiba packaging as

6

the starting point at your initial meeting with

7

him?

8

A. Yes.

9

Q. And what else did you tell him?

10

A. I told him not to use the Habanos

11

tobacco leaf and not to use the words "La Habana,

12

Cuba."

13

Q. Right. You had already testified to

14

that and I apologize.

15

In addition to that, focusing on the

16

starting point, did you give him any indication

17

of where you wanted the end point to be?

18

A. No, not at all.

19

Q. Any directions as to colors or things

20

like that?

21

A. Just to do what he was -- he saw.

22

Q. And was that your idea or was that

23

someone from General Cigar giving you

24

instructions?

25

A. That was mine?

1 Rano

2 Q. Yes.

3 When you received the initial material  
4 from Mr. Bachner that we just talked about, did  
5 you have any conversations with Mr. Bachner?

6 A. Not that I can recall.

7 Q. Do you recall if he presented it to  
8 you or whether you got it like delivered to you?

9 A. I believe it was delivered.

10 Q. Do you recall showing it to anybody  
11 else at General Cigar?

12 A. I would have shown it to probably  
13 David Burgh at the time.

14 Q. Do you recall doing that?

15 A. I don't.

16 Q. But you believe you would have?

17 A. Yes.

18 Q. Do you recall any discussions with  
19 Mr. Burgh or anyone else at General Cigar  
20 regarding what was provided to you by  
21 Mr. Bachner?

22 A. I don't.

23 Q. Do you recall having a reaction to  
24 what Mr. Bachner provided to you?

25 A. Only that it's what I asked for.

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Rano

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Q. The General Cigar that was -- began to be sold either the end of '92 or sometime the end of '93 through Dunhill was an unbanded cigar; is that correct?

A. That's correct.

Q. And it did not have, you did not have like a cardboard five-pack, you did not sell a cardboard five-pack; is that correct?

A. That's correct.

Q. And the box, it did not include the Indian head, the hard wooden box that was sold through Dunhill?

A. No, it didn't have the Indian head.

Q. And some of the other characteristics of the Cuban Cohiba packaging, for example the color and the black and white check, that was also not used by General Cigar?

A. That's correct.

Q. Do you have any recollection of a discussion or decisions regarding using or not using what Mr. Bachner provided?

And I'm talking about this time frame as you prepared the package that would go to Dunhill.

Rano

1

2

Q. In this time period, same time

3

period.

4

A. No, I don't.

5

Q. I think I'm going to end up

6

paraphrasing you, but you said something very

7

early on that it was your belief that General

8

Cigar owned both the name and the Cohiba

9

packaging; is that accurate?

10

A. Yes.

11

Q. When you say owned the Cohiba

12

packaging, what do you mean by that?

13

A. The total design.

14

Q. The total design of the Cuban Cohiba?

15

A. Yes.

16

Q. You believe that General Cigar not

17

only owned the rights to the name Cohiba, but

18

owned the -- in the United States, but also owned

19

the rights to the Cuban Cohiba packaging design

20

here in the United States?

21

A. Yes, minus the Habanos cigar leaf,

22

tobacco leaf, and the words, obviously, "La

23

Habana, Cuba."

24

Q. And do you recall why you thought

25

that?



1 Rano

2 A. I had been not told anything  
3 differently.

4 Q. You assumed it or you had been told?

5 A. I assumed.

6 Q. At some point did you learn anything  
7 different or hear anything different than that?

8 A. Yes.

9 Q. And what did you hear?

10 A. I heard that we were also restricted  
11 from using what is known as the trade dress.

12 Q. And by "the trade dress," you mean  
13 what?

14 A. I took it to mean the Indian head and  
15 the, I'm calling it the checkerboard design.

16 Q. And where did you learn that from?

17 A. I would -- I believe from counsel.

18 Q. From Mr. Wollen?

19 A. Most likely.

20 Q. And do you recall when you learned  
21 this?

22 A. After the initial packaging work was  
23 done by Mr. Bachner and before we went to any  
24 other -- the next stages, whatever that date  
25 would be.

1 Rano

2 Q. When you say the next stage, what do  
3 you mean by that?

4 A. The next evolution of package design.

5 Q. Are you talking about getting ready  
6 for the product to be shipped to Dunhill or  
7 sometime after that?

8 A. Neither.

9 Q. What's that?

10 A. Neither.

11 Q. Do you recall when it was in relation  
12 to the original work done by Mr. Bachner?

13 A. It was after the initial work.

14 Q. Do you recall how much after?

15 A. I don't recall how much after, but  
16 whenever these items were produced.

17 Q. The labels that we're looking at?

18 A. Yes.

19 Q. That were marked as Exhibit 118?

20 A. If that's correct in the book.

21 Q. Uh-huh.

22 Let me show you what's been marked,  
23 the first page of Plaintiffs' Exhibit 116, B-24,  
24 and it's a black and white of the Cuban Cohiba  
25 logo; is that correct?

1 Rano

2 A. Yes.

3 Q. And when we look at the Cuban

4 Cohiba --

5 A. I would like to say something.

6 Q. Okay.

7 A. When I'm saying yes to those  
8 questions, I'm assuming that they are not  
9 counterfeit in any way. I have no way of knowing  
10 that.

11 Q. These are documents that you provided,  
12 though, to Mr. Bachner, but you don't know if  
13 they're authentic Cuban Cohibas or somebody's  
14 counterfeit?

15 A. I don't know from this.

16 Q. Okay.

17 A. That's correct, from what I'm looking  
18 at.

19 Q. Do you have knowledge of whether that  
20 black and white is a copy of the missing inside  
21 label from the Cuban Cohiba box?

22 A. It would have been that type of label.

23 Q. Okay. Now, he, Mr. Bachner, testified  
24 that that red marking is his and it shows the  
25 deletion of the words "Cubatabaco" and the leaf

1 Rano

2 and the deletion of the words --

3 A. La Habana, Cuba.

4 Q. -- "La Habana, Cuba."

5 Is that consistent with your initial  
6 direction to him?

7 A. That's correct.

8 Q. That he should remove those elements?

9 A. That's correct.

10 Q. And otherwise he wrote it's exactly --  
11 "exactly same"?

12 A. Yes.

13 Q. Do you recall being asked at your  
14 deposition the following questions and being  
15 giving the following answers:

16 "QUESTION: Do you yourself sitting  
17 here have a recollection of anything done  
18 regarding the General Cigar Cohiba for the period  
19 1988 up to when you began to sell to Mike's and  
20 Alfred Dunhill?

21 "ANSWER: Yes.

22 "QUESTION: What do you recall  
23 doing?

24 "ANSWER: We started to develop  
25 packaging designs.

1 Rano

2 "QUESTION: And do you recall when  
3 you began to do that?

4 "ANSWER: Perhaps sometime in 1990."  
5 Do you recall that question and  
6 answer?

7 A. I recall it, yes.

8 Q. Would you agree that the answer  
9 "Perhaps sometime in 1990" is incorrect?

10 A. Based on what I know now, yes.

11 Q. Okay. And you would agree that, in  
12 fact, you started working on the packaging design  
13 sometime in the fall of 1992?

14 A. Yes.

15 Q. Do you recall having a subsequent  
16 meeting with -- strike the question.

17 Do you recall having a subsequent  
18 meeting with Mr. Bachner regarding preparing  
19 Cohiba packaging, working on Cohiba packaging?

20 A. Yes.

21 Q. And I asked you if you recalled when  
22 that was and you were uncertain?

23 A. I'm uncertain what time frame we're  
24 talking about now.

25 Q. There was an initial meeting in the

Rano

fall of '92.

A. Correct.

Q. Where you provided him with some of these things on the table here.

A. Yes.

Q. And then he provided you with some of the things that we looked at.

A. Yes.

Q. And then you met with him again.

A. Yes.

Q. And I'm asking you if you recall when that was.

A. It was a number of years later.

Q. Let me ask you to look at B-3 and B-4 of Plaintiff's Exhibit 110, invoices from Mr. Bachner dated May 17, 1993, and ask if you recall meeting with him sometime in 1993 regarding Cohiba packaging.

A. Yes.

Q. And do you recall asking him to do anything else other than -- different than what you asked him to do the first time?

A. Yes.

Q. And what do you recall?

1 Rano

2 MS. DORE: Asked and answered.

3 Wait a second. Let me hear the

4 question again?

5 (Question was read back as follows:

6 "QUESTION: And that was a consequence

7 of -- you're telling him that as a

8 consequence of this conversation that you

9 had either with Mr. Cullman or Mr. Wollen?")

10 MS. DORE: Asked and answered, but you

11 can answer it again.

12 THE WITNESS: I'm sorry, Janet?

13 MS. DORE: You can answer it again.

14 A. Yes.

15 Q. Did Mr. Bachner provide you with -- I

16 mean according to the document, he provided you

17 with full-color comprehensives, 17, resulting

18 from this meeting.

19 Do you recall him providing you

20 information with labels or documents?

21 A. Yes.

22 Q. If you look in that set of exhibits

23 you have, starting towards the back I guess, what

24 would be Exhibit 118.

25 A. This little yellow tag?

1 Rano

2 Q. 119 --

3 A. I see it.

4 Q. -- 120 and 122, are these the labels  
5 or comprehensives that he provided?

6 A. Yes.

7 Q. Look on the first page of Exhibit 122.

8 (Witness complies.)

9 Q. There's a leaf on the first one above  
10 the word "Cohiba."

11 A. Uh-huh.

12 Q. Do you know where that leaf came from,  
13 the idea for the leaf?

14 A. Mr. Bachner.

15 Q. Did you have any discussions with him  
16 in advance about using or not using a leaf?

17 I know you told him not to use the  
18 Cubatabaco leaf, but did you have any discussions  
19 about using a different leaf?

20 A. No.

21 Q. If you look at Exhibit 121, do you  
22 recall if he produced that, those two bands to  
23 you at this time or whether he produced that to  
24 you in the fall of '92?

25 A. It would have been during this time



1 Rano

2 frame.

3 Q. That he provided you with the bands?

4 A. Yes.

5 Q. Do you recall discussing with  
6 Mr. Bachner what he provided to you?

7 A. Very generally, said we received them,  
8 they look pretty good or I don't recall what the  
9 conversation was.

10 Q. You don't recall any conversation  
11 about this is what we're looking for or not  
12 looking for?

13 A. No. No.

14 Q. Do you recall having any discussions  
15 at this time, in other words, after you received  
16 this information from him, with anybody at  
17 General Cigar?

18 A. I don't recall anything specific, but  
19 I'm sure there was.

20 Q. You recall who you met with?

21 A. I would have shown it to whoever I was  
22 working for at the time.

23 Q. There's a transition between David  
24 Burgh and Austin McNamara?

25 A. Yeah.

1 Rano

2 Q. So you're not sure who it was at this  
3 time?

4 A. Exactly.

5 Q. But whoever it was, it would have  
6 been -- you would have shown it to the  
7 president?

8 A. Well, McNamara wasn't the president at  
9 the time, but I subsequently worked for him.

10 Q. Okay.

11 A. So I would have shown it to whoever I  
12 was working for at the time.

13 Q. But you don't recall any discussions?

14 A. No.

15 Q. Do you recall any -- looking  
16 specifically at, say, 6767, the first page of  
17 122.

18 A. 122, 6767 is the page number here?

19 Q. Yeah.

20 Do you recall having any discussions  
21 with anybody about this use of the checkerboard?

22 A. We didn't consider that a  
23 checkerboard. I wouldn't consider that a  
24 checkerboard.

25 Q. So when you told Mr. Bachner not to

1 Rano

2 use a checkerboard, the top label on 122 wouldn't  
3 have fallen in with what you didn't want him to  
4 use?

5 A. He submitted it as one of many  
6 designs. It was his design work. I don't know  
7 how else to explain it.

8 Q. My question to you is, was it your  
9 understanding that although you couldn't use the  
10 Cohiba checkerboard, that that design would have  
11 been acceptable?

12 A. No, that wouldn't be acceptable.

13 Q. Because it was too much like a  
14 checkerboard?

15 A. Correct.

16 Q. Did you say anything to Mr. Bachner  
17 about that?

18 A. At this time, probably not.

19 Q. Do you recall saying -- any  
20 discussions at General Cigar about that?

21 A. I don't recall any.

22 Q. Do you know if these labels, I'll call  
23 them labels, were provided to the advertising  
24 firm McCaffery, Ratner?

25 A. I don't know if they were.

1 Rano

2 Q. And when do you recall that decision  
3 being made?

4 A. Sometime around '92, '93, maybe.  
5 Maybe a little later.

6 Q. Do you recall discussions leading up  
7 to that decision?

8 In other words, let me back it up.  
9 What I'm trying to get at is, did someone tell  
10 you "We're going to be selling through Dunhill"  
11 or were you part of discussions about beginning  
12 to sell the Cohiba to Dunhill or to somebody?

13 MS. DORE: Object as to form.

14 A. I don't recall.

15 Q. Do you recall participating in a  
16 decision to sell the Cohiba to Dunhill?

17 MS. DORE: Objection. Asked and  
18 answered.

19 Answer it again.

20 A. I can't recollect.

21 Q. Okay. Do you recall participating in  
22 discussions about whether to begin to sell the  
23 Cohiba again?

24 A. Yes.

25 Q. Okay. And what do you recall about

1 Rano

2 that?

3 A. That we wanted to get the brand in  
4 commerce.

5 Q. And was it your recollection that the  
6 brand had not been in commerce for several years?

7 A. No, that wasn't my recollection.

8 Q. Do you recall having any discussions  
9 about whether the brand was in commerce for the  
10 years two, three, four years prior to 1992?

11 A. I don't recall any discussion about  
12 it.

13 Q. If the brand was in commerce, do you  
14 recall why there was discussions about wanting to  
15 get the brand in commerce?

16 A. No.

17 Q. Were you aware that at that time in,  
18 sometime in late '92 or '93, the brand Cohiba was  
19 not in commerce, the General Cigar Cohiba?

20 MS. DORE: Can I hear the question,  
21 please?

22 (Question was read back as follows:

23 "QUESTION: Were you aware that at  
24 that time in, sometime in late '92 or '93,  
25 the brand Cohiba was not in commerce, the

1 Rano

2 disclosing any conversations that included  
3 counsel, you can answer.

4 MR. GOLDSTEIN: No. To the extent it  
5 includes legal advice. If Mr. Cullman is  
6 sitting there in the corner smoking a cigar,  
7 is Mr. Wollen is sitting in the corner  
8 smoking cigars and talking about marketing a  
9 cigar he can't answer?

10 MS. DORE: To the --

11 MR. GOLDSTEIN: Is that your  
12 instruction? Because I want it clear on the  
13 record if that's what it is.

14 MS. DORE: To the extent that the  
15 discussion included legal advice from  
16 counsel or the giving of information to  
17 counsel for the purpose of counsel rendering  
18 legal advice, exclude those discussions from  
19 your answer.

20 BY MR. GOLDSTEIN:

21 Q. What else do you recall being  
22 discussed at meetings regarding wanting to get  
23 the brand in commerce?

24 A. That we just wanted to get it in -- we  
25 just wanted to start selling the brand.

Rano

1

2

Q. Why?

3

A. We wanted to ensure that we were

4

protecting our trademark rights.

5

Q. Anything else?

6

A. No.

7

Q. And a decision was made to begin to

8

sell as an exclusive through Dunhill?

9

MS. DORE: Is that a question?

10

MR. GOLDSTEIN: Yes.

11

A. Correct.

12

Q. And were you the person who had the

13

contact with Dunhill?

14

A. No.

15

Q. Do you know who that was?

16

A. Someone in sales.

17

Q. When I say "the contact," I mean the

18

discussions with Dunhill about whether they would

19

be the exclusive purveyor of the General Cigar

20

Cohiba.

21

A. I understood the question.

22

Q. Okay. I didn't mean the ongoing

23

relationship.

24

A. Right. I understood your question.

25

Q. Okay. Now, you had testified in your

1 Rano

2 prior deposition that the cigar sold to Dunhill  
3 was the same cigar as the Temple Hall cigar; is  
4 that correct?

5 A. That's correct.

6 Q. When you say it's the same cigar,  
7 filler, binder, wrapper was the same cigar?

8 A. That's correct.

9 Q. Do you know why that decision was  
10 made?

11 A. Convenience.

12 Q. When say "convenience," it was easier  
13 than coming up with a new cigar?

14 A. Correct.

15 Q. And do you recall when General Cigar  
16 decided to begin to make this Cohiba the same as  
17 the Temple Hall, when that decision was made?

18 A. I don't recall. Mid '90 sometime.

19 Q. I'm talking about the cigar that was  
20 sold through Dunhill.

21 A. Correct.

22 Q. Are you aware of instructions being  
23 given to the Dominican factory to begin to make  
24 the General Cigar Cohiba for Dunhill same as the  
25 Temple Hall?



1 Rano

2 A. Yeah, I would have given those  
3 instructions to them.

4 Q. Do you speak Spanish?

5 A. No.

6 Q. Do you read Spanish?

7 A. No.

8 Q. I'm going to show you what's been  
9 marked as Plaintiffs' Exhibit 127, which is a  
10 handwritten Spanish language document. I'm also  
11 going to give you and counsel the same thing I  
12 gave counsel last time, which was the Spanish  
13 language document with an English translation  
14 done by someone in our office who speaks fluent  
15 Spanish.

16 And I guess since you don't speak  
17 Spanish, let me ask you to look at the English,  
18 and whether you look at the Spanish or the  
19 English, it has the same date, October 27th,  
20 1992, and the handwriting, "Instructions received  
21 from Senor Menendez."

22 A. Senor Menendez, yeah.

23 Q. And you understand that to be Benjamin  
24 Menendez?

25 A. Yes.

1 Rano

2 Q. Do you know who -- do you recognize  
3 the handwriting?

4 A. I don't.

5 Q. If you look at the English part, the  
6 first one is, "To prepare 1,200 cigars of each of  
7 the following sizes of Cohiba," and there's the  
8 three types, and then in Spanish on the side,  
9 "Los mismos TH," and over here the same TH.

10 Do you understand that to be  
11 referencing that the cigars will be the same as  
12 Temple Hall?

13 MS. DORE: I'm going to object to the  
14 extent that you're asking him to say that  
15 what the English translation says is, in  
16 fact, what the Spanish version says. I only  
17 have your word for the accuracy of the  
18 translation. I haven't verified it.

19 Subject to that, using the English  
20 language that counsel has come up with, you  
21 can answer the question.

22 BY MR. GOLDSTEIN:

23 Q. Do you know that "los mismos" means  
24 "the same"?

25 A. Now I do.

1 Rano

2 Q. Well, I'm asking if you knew that.  
3 Some people don't speak Spanish but know some  
4 Spanish.

5 If you look at item two in English,  
6 "These cigars will be sent to Alfred Dunhill of  
7 London by air approximately on November 19,  
8 1992."

9 What I want to ask you is whether this  
10 in any way refreshes your recollection or enables  
11 you to recall anything as to the time when  
12 General Cigar first began to make its Cohiba for  
13 Alfred Dunhill.

14 A. It would have been a period of time  
15 before November 19th.

16 Q. And this document is dated October  
17 27th.

18 A. Right.

19 Q. And I'm asking you if this helps you  
20 in any way to recall that it was about this time  
21 that General Cigar gave the instructions to begin  
22 to make the cigars for Dunhill.

23 A. I believe it would have been. I mean  
24 it's self-evident to me.

25 Q. From looking at this document.

1 Rano

2 A. Well, from the dates.

3 Q. And then if you look on the second  
4 page, it just lists the cities where the -- in  
5 English. You can look on the English side. I  
6 mean in the Spanish, because they're not in the  
7 translation.

8 (Witness complies.)

9 Q. In English, "Cohiba order for Alfred  
10 Dunhill of London, distribution by stores," it  
11 has a November 16th, '92 date and it has the list  
12 of Dunhill stores; is that correct?

13 A. I don't -- I'm not sure what I'm  
14 looking at any longer, what you're asking me to  
15 look at.

16 Q. I'm asking you to look at the second  
17 page, whether in English or in Spanish, and it  
18 has a November 16th date.

19 A. Okay. I see that.

20 Q. And in Spanish, in the Spanish one it  
21 has a header and we've translated the header as  
22 "Cohiba order for Alfred Dunhill of London,  
23 distribution by stores," and in the translation  
24 version we left it blank. And if you go back to  
25 the Spanish, in the blank are the types of

Rano

cigars, the cities where the stores are and the number of cigars.

A. Correct.

Q. And I'm just asking you, do you recall that those are the cities where Dunhill has stores?

A. Yes, or had stores.

Q. Had stores at that time.

Do you have any knowledge of any shipments of General Cigar Cohibas to Dunhill stores prior to November 16th, '92?

A. I don't.

Q. And does this refresh your recollection in any way of a decision being made by General Cigar sometime in October of '92 to begin making the cigars same as Temple Hall for shipment to Dunhill?

A. Only to the degree that they would have to be.

Q. By looking at the document.

A. Right.

Q. Do you have any knowledge of any work done by General Cigar to develop the Cohiba cigar for sale to Dunhill other than a decision to use

1 Rano

2 the same cigar as Temple Hall?

3 A. No.

4 MR. GOLDSTEIN: Why don't we take a  
5 little break.

6 (Recess is taken.)

7 BY MR. GOLDSTEIN:

8 Q. Do you have any knowledge of any work  
9 done by General Cigar prior to September of '92  
10 to get the General Cigar Cohiba to market?

11 A. No.

12 Q. In terms of developing the Cohiba  
13 cigar that went to -- was launched in 1997, I'll  
14 start talking about that cigar now for a while,  
15 the cigar itself, when was that cigar that  
16 ultimately was launched in September of '97  
17 created?

18 A. Sometime earlier that year.

19 Q. Do you have any knowledge of Mr. Mayer  
20 and Mr. Menendez together coming up with that  
21 cigar in early 1996?

22 A. They would have been working on it  
23 with other people, yes.

24 Q. Do you have any knowledge that they,  
25 those two, came up with the cigar in early '96

1 Rano

2 Q. Okay.

3 MR. GOLDSTEIN: Let's mark this.

4 (Plaintiff's Exhibit 160, Memorandum  
5 dated 3-14-97 from Lineberger to Rano,  
6 Geoghegan and Farrington, marked for  
7 identification, as of this date.)

8 BY MR. GOLDSTEIN:

9 Q. I'm showing you a document that we've  
10 marked as Plaintiffs' Exhibit 160. It's a  
11 memorandum from Ms. Lineberger to you,  
12 Mr. Geoghegan and Mr. Farrington and it's copied  
13 to Lois Coleman, dated March 14, 1997, and I ask  
14 you if you've seen this document before.

15 A. Not to my recollection.

16 Q. The fact that it was CC'd to you,  
17 though, would have meant that it was sent to you?

18 A. Yes.

19 Q. In the first sentence she says, "I  
20 went through our data from 1996 U&A study to see  
21 if I could extract anything about Cohiba. No  
22 respondent cited Cohiba as the primary brand, but  
23 13 did say that the Cohiba was the best brand  
24 they ever smoked."

25 Do you have any recollection of that

1 Rano

2 statement?

3 A. No.

4 Q. Were you aware that in the U&A study  
5 in 1996, a certain number of people identified  
6 Cohiba as the best brand ever smoked?

7 A. Can you say that, read that back for  
8 me?

9 Q. Were you aware that in the U&A study,  
10 1996 U&A study, a certain number of people  
11 identified Cohiba as the best brand they ever  
12 smoked?

13 A. If I had seen the information, I would  
14 have been aware of it. It would have made me  
15 aware.

16 Q. But you just don't have any  
17 recollection?

18 A. No.

19 Q. This memorandum that I gave to you  
20 essentially talks about the 13 respondents who  
21 identified Cohiba as the best brand they ever  
22 smoked and gives some demographic information  
23 about these people.

24 And the third page of the memo it  
25 says, "These respondents have dramatically



1 Rano

2 different perceptions of Cohiba versus their  
3 primary brand. They don't consider Cohiba a good  
4 value and obviously availability is rated low for  
5 Cohiba." And then in parentheses, "I think we  
6 can safely assume that these guys are  
7 specifically referring to Cuban Cohibas. They  
8 particularly like Cohibas for their full-bodied  
9 taste, their craftsmanship and aroma."

10 Do you have any information or any  
11 reason to disagree with the conclusion that  
12 "...we can safely assume these guys are  
13 specifically referring to Cuban Cohibas"?

14 A. I have no reason to doubt it.

15 Q. Is there anything in that information,  
16 that description that I just read, that would  
17 make you think they're referring to the General  
18 Cigar Cohiba?

19 A. No.

20 Q. Would General Cigar have any reason to  
21 throw away the 1996 U&A study, all copies of it?

22 A. The actual study itself, the raw data  
23 perhaps, not the summaries of it.

24 Q. I mean it's something you would want  
25 to keep to be able to refer back to as a company

1 Rano

2 not sure it's a U&A, but we'll probably find  
3 out soon.

4 BY MR. GOLDSTEIN:

5 Q. Let me show you what's been previously  
6 marked as Plaintiff's Exhibit 19.

7 I had asked you in your prior  
8 deposition a few questions about the focus group  
9 in Chicago on Tuesday, March 18th, 1997, and we  
10 established that you were present at that  
11 particular focus group.

12 Do you recall that?

13 A. Yes.

14 Q. And you recall being present there?

15 A. Yes.

16 Q. Do you recall this document, "Project  
17 Background," prepared based on that focus group  
18 research?

19 A. I remember the document.

20 Q. Do you remember receiving it at the  
21 time and reviewing it?

22 A. Yes.

23 Q. There's a section of it, page 5, 6 and  
24 7, regarding the people researched, their  
25 comments, which the person preparing this

1 Rano

2 document categorized as positive or neutral  
3 comments on one hand or negative comments on the  
4 other hand.

5 Do you recall reviewing that?

6 A. Not specifically but...

7 Q. Do you know how comments were  
8 categorized as either positive or neutral versus  
9 negative?

10 A. They would be used as positive if the  
11 respondent agreed with the materials that they --  
12 the statements of the materials or the  
13 positioning of the materials we were showing  
14 them.

15 It would be negative if they, if  
16 they -- what they saw was not what the materials  
17 were meant to show.

18 Q. If you look on page 6 where the  
19 statement, the positioning statement, was  
20 "Pleasure of the best," positive statements were  
21 "Compares this Cohiba to a Cuban cigar and makes  
22 me wonder if this is a Cuban cigar." One's at  
23 the top and one is about two-thirds of the way  
24 down, and another statement is "Plays off of  
25 Cuban image."

1 Rano

2 Do you know why those were considered  
3 positive or neutral responses?

4 A. No.

5 Q. Do you know who prepared this part of  
6 the document?

7 A. It would have been Ms. Lineberger.

8 Q. She reported to you?

9 A. Yes.

10 Q. Are you aware, other than the March  
11 18th focus group in Chicago for which I have  
12 several documents, are you aware of any other  
13 focus group or consumer research that General  
14 Cigar did prior to its launch of the '97,  
15 September '97 Cohiba?

16 MS. DORE: For the Cohiba?

17 MR. GOLDSTEIN: Yeah, for the Cohiba.

18 A. I don't have any recollection of any.

19 MR. GOLDSTEIN: Can we mark this.

20 (Plaintiff's Exhibit 161, document  
21 entitled "General Cigar Co. Inc. Marketing  
22 Consumer Research, Key Observations and  
23 Conclusions, Premium Cigars," dated 8-27-97,  
24 marked for identification, as of this date.)

25 BY MR. GOLDSTEIN:

1 Rano

2 Q. I'm showing you what we've marked as  
3 Plaintiff's 161. It's a document titled "General  
4 Cigar Co. Inc. Marketing Consumer Research, Key  
5 Observations and Conclusions, Premium Cigars,"  
6 with an August 27, 1997 date.

7 Have you seen this document before?

8 A. I can't recall.

9 Q. On the top in some handwriting, it  
10 looks to me like PREN 1997.

11 Do you recognize that handwriting?

12 A. It looks like McNamara's.

13 Q. Now this date, August 27th, is  
14 approximately one month before the launch of the  
15 new Cohiba; is that correct?

16 A. Yes.

17 Q. And it's prior to the advertising for  
18 the new Cohiba?

19 A. That I'm not sure. I believe so, but  
20 it would have depended on the timing of Cigar  
21 Aficionado.

22 Q. Well, the, the ad was launched in the  
23 October '97 issue --

24 A. Okay.

25 Q. -- of Cigar Aficionado.

1

Rano

2

A. Okay. That would have been the -- can

3

I just see it for a minute?

4

Q. Sure.

5

That's the gateway?

6

A. Yeah, that would have been the --

7

MR. GOLDSTEIN: I'm showing him Cigar

8

Aficionado from October '97, which we had

9

previously marked as Exhibit 17.

10

BY MR. GOLDSTEIN:

11

Q. So this would have come out prior to

12

the advertising for the launch?

13

A. Correct.

14

Q. Even if you don't recall seeing it,

15

would you have received a copy of this document?

16

A. Yes.

17

Q. Do you know what this document is,

18

what I'm looking at?

19

A. It's an overview of research and data

20

that was gathered for research presentation by

21

General Cigar Company.

22

Q. Is this the U&A study for 1997 or is

23

it something else?

24

A. This is something else.

25

Q. So the U&A study for '97, you believe

1 Rano

2 there was a U&A study for 1997?

3 A. I do.

4 Q. And I'm not looking at it?

5 A. No.

6 Q. Do you know -- I asked you the  
7 question, you answered it, but...

8 MS. DORE: Then don't ask it.

9 BY MR. GOLDSTEIN:

10 Q. Do you know what the purpose of this  
11 document was?

12 A. This document was used for  
13 presentation, would be my guess, an update on the  
14 market conditions from gathering information from  
15 different sources.

16 Q. Do you know who prepared the document?

17 A. My guess would have been either  
18 Ms. Lineberger or Mr. Geoghegan, or at that time  
19 we had another fellow, young fellow, working for  
20 us, but I can't remember his name right now, but  
21 I don't think he would have produced it.

22 Q. This was the person you were trying to  
23 identify earlier?

24 A. Yes.

25 Q. Was this type of document done on an

1 Rano

2 annual basis?

3 A. I would say more often than annual.

4 Q. On a regular basis?

5 A. On a periodic basis.

6 Q. Two or three times a year?

7 A. Probably about twice a year.

8 Q. And you as head of marketing would  
9 have received a copy of it?

10 A. Yes.

11 Q. Who else do you believe would have  
12 received a copy of this?

13 This document in specific first and  
14 then...

15 A. I would say the president of the  
16 company, the brand manager for premiums, the  
17 brand manager for domestic cigars as I see some  
18 are in here. Those are the people we presented  
19 it to.

20 Q. You would have presented this to  
21 Cullman junior and senior?

22 A. Yes.

23 Q. Is that who it was prepared for,  
24 basically presentation to them?

25 A. Basically, yeah. Yes.



1 Rano

2 conducted by General Cigar in May of 1997?

3 A. I don't recall any.

4 Q. Do you have any knowledge of what  
5 happened to all this data that's being referred  
6 to here?

7 A. No, I don't.

8 Q. If you turn to page 14.

9 (Witness complies.)

10 Q. And it says if you go down about  
11 halfway, a little farther, "Cohiba leads Macanudo  
12 as the best brand ever smoked, followed by  
13 Macanudo and Fuente."

14 Do you recall that statement at the  
15 time?

16 A. No.

17 Q. Do you have any knowledge as to what  
18 Cohiba they're referring to there?

19 A. Based on an earlier document that I  
20 saw, it would lead me to believe that it was the  
21 Cuban Cohiba.

22 Q. Would you have been surprised to learn  
23 that a survey public identified the General Cigar  
24 as the best brand ever smoked ahead of Macanudo?

25 A. I'm sorry. I don't understand the

1 Rano

2 MS. DORE: Can I hear that question?

3 BY MR. GOLDSTEIN:

4 Q. At the time, at the time this came  
5 out, are you aware of any discussions in which  
6 people questioned some of the conclusions in the  
7 report based on the size or the nature of the  
8 sample?

9 A. As the report was presented, there  
10 were questions that came up as to the accuracy of  
11 the data and so forth and so on and how it was  
12 collected and that, so there were questions that  
13 were raised.

14 Q. Okay. Do you have any recollection of  
15 the responses?

16 A. I don't.

17 Q. Whether any of those questions were  
18 satisfied or not?

19 A. I couldn't speak to whether they were  
20 satisfied or not, because I don't know if the  
21 questioner was happy, was satisfied or not.

22 Q. Do you know if General Cigar uses this  
23 type of information in making marketing  
24 decisions?

25 A. Yes, we do.

1 Rano

2 marked 101, and I think I asked the witness what  
3 it stood for, and if my recollection is correct,  
4 he was unable to recall.

5 (Counsel handing.)

6 A. No. This is Mendelson, this is  
7 Mendelson Research.

8 Q. Mendelson Research, Inc., or do you  
9 know?

10 A. I don't know.

11 Q. Do you know where they're located?

12 A. I don't.

13 Q. In 1997, did General Cigar do work on  
14 creating a new package for the Cohiba it planned  
15 on launching?

16 A. By new package --

17 Q. Box, design, logo, label.

18 A. Yes.

19 Q. Band.

20 A. Yes.

21 Q. And who did that work?

22 A. We reviewed Mr. Bachner's work and we  
23 asked a Mr. Brent Marmo, M-a-r-m-o, I believe, to  
24 take a try at developing packaging for Cohiba.

25 Q. Did you ask Mr. Bachner to go back to

1 Rano

2 with in the way of designing for Cohiba, a  
3 complete package.

4 Q. Was he given any parameters or  
5 restrictions?

6 A. By the time he got involved, I think  
7 we were down to we couldn't use any of the Cuban  
8 Cohiba trade dress.

9 Q. Was that --

10 A. And at that time --

11 Q. Sorry.

12 A. -- also Mr. Marmo, we were at the  
13 point where we wanted to make sure that we  
14 were -- we wanted to make sure that what we did  
15 was very distinctive and unto itself.

16 Q. When you say you couldn't use any of  
17 the Cuban Cohiba trade dress, was that any  
18 different or additional information than what we  
19 talked about earlier regarding what you learned  
20 in 1993?

21 A. When Mr. Marmo got involved?

22 Q. In 1993 you told me that as a result  
23 of conversations you had, you learned that there  
24 was some restrictions on or the company had some  
25 restrictions on what you would do with the

1 Rano

2 packaging, and what I'm asking is, in 1997 did  
3 you have additional information or additional  
4 instructions or was it the same, based on what  
5 you had learned in 1993?

6 A. We received some additional  
7 instructions.

8 Q. Okay. And who did you receive those  
9 from?

10 A. From both counsel and management.

11 Q. And who from management?

12 A. The Cullmans.

13 Q. And what did you -- together, Mr. --  
14 senior and junior?

15 A. I don't recall.

16 Q. What did you -- what instructions did  
17 you get from the Cullmans?

18 A. That the colors being used in the  
19 Cuban packaging we wanted to stay away from.

20 Q. And do you recall when that was?

21 A. It was shortly before the launch of  
22 the product, the launched sales of the product.

23 Q. Had you provided them with prototypes  
24 in which the Cuban Cohiba colors were used?

25 A. I don't recall.

1 Rano

2 Q. Do you recall prototypes, even if they  
3 weren't shown to Cullmans, in which the Cuban  
4 Cohiba colors were used?

5 A. Yes.

6 Q. And do you recall that General Cigar  
7 in its documents referred to those colors as  
8 Cohiba yellow and Cohiba gold?

9 A. I don't recall if they referred to  
10 them as specifically as what you're saying.

11 Q. And did Marmo create documents using  
12 the Cuban Cohiba colors?

13 A. Not documents, no.

14 Q. Things?

15 A. I can't recall if he did.

16 Q. Were labels or objects created  
17 in-house for this launch product?

18 A. No.

19 Q. Whatever was created was created  
20 outside?

21 A. Yes.

22 Q. Do you recall seeing the Cohiba O, for  
23 example, any mock-ups or prototypes with that O  
24 in yellow?

25 A. I believe I did.

1 Rano

2 Q. So those would have been created by  
3 Marmo?

4 A. Yes.

5 Q. Do you recall seeing -- do you know  
6 what a flock tray is?

7 A. Yes.

8 Q. What's a flock tray?

9 A. It's just a plastic tray that has a, a  
10 synthetic material that makes it feel velvety  
11 sprayed on it.

12 Q. And do you recall seeing that in Cuban  
13 Cohiba colors?

14 A. What are Cuban Cohiba colors?

15 Q. I thought we were talking about Cuban  
16 Cohiba colors, yellow or gold.

17 A. I believe we saw one in yellow.

18 Q. And do you have a recollection of  
19 showing product to the Cullmans in yellow, with  
20 using yellow?

21 A. We probably did.

22 Q. Do you know why they said not to use  
23 yellow or not to use the Cuban -- to stay away  
24 from the Cuban colors?

25 A. It was based on conversations with

Rano

legal counsel.

Q. Your conversations or the Cullmans' conversations?

In other words, the Cullmans told you that it's based on their conversations with legal counsel?

A. No. Legal counsel informed us or gave an opinion.

Q. To stay away from the Cuban colors?

MS. DORE: Did you get advice from counsel on whether or not to use the Cuban colors as he's defined them?

THE WITNESS: Yes.

MS. DORE: Okay. Can you answer his question without disclosing the contents of the conversations with counsel.

A. Could you ask me the question again?

Q. My question was about your conversations with the Cullmans.

A. Okay.

Q. And you had told me that the Cullmans told you to stay away from the Cuban colors. That was back a few questions ago.

A. Correct.



1 Rano

2 Q. And then we talked a little bit about  
3 the colors that Marmo prepared, and then I asked  
4 you did the Cullmans tell you why to stay away  
5 from the Cuban colors.

6 And my question is, did the Cullmans  
7 tell you why to stay away from the Cuban colors?

8 A. The answer to that is...

9 MS. DORE: Just yes or no. Did they  
10 tell you why.

11 A. Did they tell me why. No.

12 Q. Did you have conversations with  
13 counsel regarding staying away from the Cuban  
14 colors?

15 MS. DORE: Yes or no.

16 A. Yes.

17 Q. And who? Which counsel?

18 A. Mr. Wollen.

19 Q. And did Mr. Wollen tell you why to  
20 stay away, yes or no, did Mr. Wollen tell you why  
21 to stay away from the Cuban colors?

22 MS. DORE: Just yes or no.

23 A. Yes.

24 Q. And my question is, what did  
25 Mr. Wollen tell you as to why you should stay

1 Rano  
2 away from the Cuban colors?

3 MS. DORE: Instruct the witness not to  
4 answer on the grounds of attorney-client  
5 privilege.

6 BY MR. GOLDSTEIN:

7 Q. In the course of conversations with  
8 Mr. Wollen regarding staying away from Cuban  
9 colors, did you discuss the action pending  
10 between Cubatabaco and General Cigar in the  
11 Patent and Trademark Office?

12 MS. DORE: Yes or no.

13 A. Could you repeat the question one more  
14 time?

15 Q. In the course of Mr. Wollen giving you  
16 advice or giving you a statement as to why you  
17 should stay away from the Cohiba colors, Cuban  
18 colors, in the course of that, was there a  
19 discussion about the pending action between  
20 Cubatabaco and General Cigar in the trademark  
21 office?

22 MS. DORE: Before you answer, let me  
23 hear that again.

24 (Question was read back as follows:

25 "QUESTION: In the course of

Rano

Mr. Wollen giving you advice or giving you a statement as to why you should stay away from the Cohiba colors, Cuban colors, in the course of that, was there a discussion about the pending action between Cubatabaco and General Cigar in the trademark office?")

MS. DORE: I'll instruct you not to answer on the grounds of attorney-client privilege.

BY MR. GOLDSTEIN:

Q. When did this conversation with Mr. Wollen take place?

A. Late July or August maybe.

Q. Did you ever have a discussion with Mr. Wollen regarding the pending trademark action between Cubatabaco and General Cigar?

A. I don't recall.

Q. Did Mr. Wollen tell you to stay away from the Cuban Cohiba for trademark-related reasons?

MS. DORE: Yes or no, or if you recall at all.

A. I don't recall.

Q. Without asking you to give the answer,

1 Rano

2 in the package redesign?

3 A. Only as liaison. He wasn't involved  
4 in the decision-making.

5 Q. Were you involved in the  
6 decision-making about what the package would look  
7 like or were you essentially told what the  
8 package should look like?

9 A. I was involved in the  
10 decision-making.

11 Q. Prior to July or August of 1997, did  
12 you have any instructions not to use the Cuban  
13 Cohiba color?

14 A. Not to my recollection.

15 Q. Did you give Mr. Marmo any other  
16 instructions as to things you -- parameters,  
17 things to include or not to include?

18 A. Again, not to my recollection.

19 Q. Do you recall if you provided  
20 Mr. Marmo with things related to, images related  
21 to the Cuban Cohiba?

22 A. No, we didn't.

23 Q. This is Plaintiff's Exhibit 36. It's  
24 actually a grouping of documents which we had  
25 identified as a composite exhibit. All the

1 Rano

2 A. No, I didn't say that.

3 Q. Do you recall people at General Cigar  
4 referring to Cohiba gold and Cohiba yellow?

5 A. Some. Some people.

6 Q. During the creation of this  
7 packaging.

8 A. That I don't recall if it was during  
9 the creation.

10 Q. Well, when do you recall hearing it?

11 A. Just in general conversation  
12 sometime.

13 Q. Is it your understanding that the  
14 reference to Cohiba yellow and Cohiba gold is to  
15 the Cuban Cohiba colors?

16 A. That would be my understanding.

17 Q. If you turn after this handwritten  
18 document, the next document is a memo dated June  
19 9th from Farrington to Gary Krol.

20 A. Yes.

21 Q. Okay. I'm just going to ask you if  
22 you would look at the various CC's on some of  
23 these documents to see if that in any way  
24 refreshes your recollection as to the person with  
25 Lineberger, although I don't think these are

1 Rano

2 was this decision made?

3 A. As I said earlier, approximately a  
4 month before the sales launch of the product.

5 Q. Do you know why you were preparing a  
6 package with the color Cohiba yellow?

7 A. That's what we were recommending.  
8 That's what, that's what was being recommended.

9 Q. Why?

10 A. It was just a package that we thought  
11 was a good-looking package.

12 Q. Why Cohiba yellow?

13 A. I'm not sure it was Cohiba yellow. I  
14 know it was a yellow, Pantone 130.

15 Q. Why yellow Pantone 130, which your  
16 staff referred to as Cohiba yellow?

17 MS. DORE: Object to the form of the  
18 question.

19 You can answer it.

20 Q. You can answer.

21 A. There was a group that wanted to have  
22 the yellow being used, as it was similar to what  
23 was being used in the marketplace already, in  
24 certain markets.

25 Q. By the Cubans?

1 Rano

2 A. By the Cubans.

3 Q. And the idea was to associate the  
4 Cuban cigar, in the mind of the consumer, with  
5 the General Cigar cigar?

6 A. No, no. It was just a frame of  
7 reference that if they saw yellow, they would  
8 recognize Cohiba, that's all.

9 Q. Did the General Cigar, General Cigar  
10 Cohiba in Dunhill and Mike's prior to the launch  
11 have any yellow?

12 A. No.

13 Q. And so the purpose of the yellow, the  
14 idea of the yellow was to create a frame of  
15 reference between your cigar and the Cuban Cohiba  
16 cigar?

17 A. Yes.

18 Q. And were you among the group that was  
19 promoting the yellow?

20 A. Yes.

21 Q. Until you received advice from  
22 counsel, were you aware of the Cullmans opposing  
23 the use of the yellow?

24 A. No.

25 Q. Prior to that time, were the Cullmans

1 Rano

2 supporters of the use of yellow?

3 A. Not particularly.

4 Q. They had not committed?

5 A. Correct.

6 Q. If you would keep going a ways in to  
7 4995, unfortunately the pages aren't really in  
8 order, it's a June 23, 1997 memo from Dickson  
9 Farrington to Ross Wollen and it says -- do you  
10 recall seeing this memo before?

11 A. I don't recall it, no.

12 Q. Do you recall Farrington forwarding to  
13 Mr. Wollen the proposed graphics artwork for the  
14 Cohiba brand for his review?

15 A. I don't recall him doing it.

16 Q. Well, do you know how Mr. Wollen --  
17 Mr. Wollen must have seen what you were doing to  
18 provide you with the legal advice he did; is that  
19 correct?

20 A. Yes.

21 Q. And your understanding from talking to  
22 him was that he had seen the work that you were  
23 doing?

24 A. From talking to whom?

25 Q. Mr. Wollen.



1 Rano

2 A. Yes.

3 Q. Well, I guess what I'm asking is, were  
4 there subsequent presentations to him of later  
5 artwork that led to the review?

6 I'm trying to put a time frame on it.

7 A. I believe Mr. Wollen --

8 MS. DORE: Don't disclose  
9 conversations with counsel. He's just  
10 asking you for the timing.

11 THE WITNESS: Timing?

12 MS. DORE: He just said that's what  
13 he's trying to do, put a time frame on it.

14 BY MR. GOLDSTEIN:

15 Q. In other words, what I'm trying to  
16 find out is, is this the presentation that was  
17 made to Mr. Wollen that resulted in an opinion or  
18 was it did something happen later?

19 A. This was a -- no.

20 MS. DORE: That's what happens when  
21 you ask a compound question.

22 MR. GOLDSTEIN: Okay. My fault.

23 BY MR. GOLDSTEIN:

24 Q. Was there a subsequent presentation to  
25 Mr. Wollen of proposed graphics or artwork?

1 Rano

2 A. Yes.

3 Q. And do you recall when that was?

4 A. Sometime after June 23rd.

5 Q. I know, but --

6 A. I don't recall.

7 Q. Okay. The next page is a bunch of  
8 different sizes of the word "Cohiba" with the O  
9 colored in, or in our black and white version,  
10 blacked in with the Pantone 130C in a little  
11 square in black, because it's black and white.

12 Do you know if these documents exist  
13 in color at General Cigar, or existed in color at  
14 the time?

15 A. I believe they did.

16 Q. Do you know what happened to them?

17 A. I don't.

18 Q. If you turn to the next document, it's  
19 date 6-23-97 and it has the spec sheet of how to  
20 make a Cohiba Churchill?

21 A. Yes.

22 Q. And then if you go to the bottom of  
23 the second page it says, "Launch of Cohiba is  
24 number one priority for fiscal 1997. Artwork  
25 graphics will be provided. Must have three

1 Rano

2 sample boxes for RTDA" and that's signed by you;  
3 is that correct?

4 A. Correct.

5 Q. On June 27, 1997?

6 A. Uh-huh. Yes.

7 Q. If you turn to the next page, it says,  
8 "Please submit flock tray samples in the  
9 following colors: Black, vintage red, Cohiba  
10 yellow," signed by you; is that correct? That's  
11 your signature?

12 A. I'm not sure I'm on the right page.

13 Q. Page 6474. No. Go back to what you  
14 were looking at. There should be another little  
15 page there.

16 A. That's my signature.

17 Q. Right there under the "Black, vintage  
18 red and Cohiba yellow."

19 A. Where it says "Approved by."

20 Q. Yes. And you approved it?

21 A. Correct.

22 Q. You approved creating flock trays in  
23 Cohiba yellow; is that correct?

24 A. Yes.

25 Q. If you go a couple more pages in,

1 Rano

2 Q. -- box or label?

3 It says here, "We need labels, specs,  
4 and colors at once," and it's dated August 6,  
5 '97.

6 And the next document is another memo  
7 from Brescia to Dickson. The first one was from  
8 Brescia to you, this one is from Brescia to  
9 Farrington, six days later, August 12th. "Please  
10 confirm label dimension" and then "Color, red  
11 Pantone 185."

12 Based on those two documents, do you  
13 know if it was between August 6th and August 12th  
14 that the decision was made to go with red instead  
15 of yellow or whether the decision had already  
16 been made?

17 Based on these two documents, does  
18 that help you to determine whether the decision  
19 to go with red was made between August 6th and  
20 August 12th?

21 A. It could have been made a little  
22 earlier than August 6th.

23 Q. Go back a few pages. I thought that  
24 was going to clear it for us, but it didn't. The  
25 one that didn't have -- oh, that's a different

1 Rano

2 one. That doesn't have a number.

3 It's a memo from Morris to Farrington,

4 July 23rd, 1997. It's almost in the back.

5 A. July 3rd?

6 Q. 23rd.

7 A. From Bob Morris to Dickson

8 Farrington. I got it.

9 Q. Morris says, "I'm still waiting for  
10 final decision on," and it says "bands, the  
11 finish and silk screen graphics on the wood box  
12 and the color of the flocked tray. When these  
13 issues are resolved, please provide me with  
14 clearly approved artwork that can be passed on to  
15 the suppliers without requiring editing."

16 Based on that, would you say the  
17 decision to go from yellow to red was made after  
18 July 23rd?

19 A. I would.

20 Q. I show you what was previously marked  
21 as Plaintiff's Exhibit 37, and it's an excerpt  
22 from, out of the McCaffery, Ratner files, MC 144  
23 and 145, of the August 1997 issue of Cigar  
24 Insider.

25 And if you look on the bottom middle,

1 Rano

2 A. Yes.

3 Q. At this time the president was Cullman  
4 junior or still Austin McNamara, at the time of  
5 the launch?

6 A. I think it was McNamara.

7 Q. Do you know if Mr. Currier is still  
8 there?

9 A. He's not.

10 Q. Do you know where he is?

11 A. I don't.

12 Q. Sitting here, has the memory been  
13 jogged at all as to Ms. Lineberger's assistant?

14 A. I gave you the box guy.

15 MR. GOLDSTEIN: I have no more  
16 questions at this time.

17 No questions?

18 MS. DORE: No.

19 MR. GOLDSTEIN: Okay.

20 (Time noted: 3:35 p.m.)

21 John M. Rano

22 JOHN M. RANO

23 Subscribed and sworn to before me

24 this 22 day of September, 2000.

25

Janet Dore

JANET DORE  
Notary Public, State of New York  
No. 31-4907227  
Qualified in New York County  
Commission Expires March 20, 2000

8/31/02

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## C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, ANNETTE ARLEQUIN, a Certified  
Shorthand Reporter and Notary Public within  
and for the State of New York, do hereby  
certify:

That JOHN M. RANO, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the testimony  
given by the witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 1st day of August, 2000.



ANNETTE ARLEQUIN, CSR, RPR

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## ----- I N D E X -----

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## ----- EXHIBITS -----

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Plaintiff's Exhibit 158, New Product Spec Sheet dated 4-30-97	336
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Plaintiff's Exhibit 159, U&A Study	356
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Plaintiff's Exhibit 160, Memorandum dated 3-14-97 from Lineberger to Rano, Geoghegan and Farrington	361
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Plaintiff's Exhibit 161, document entitled "General Cigar Co. Inc. Marketing Consumer Research, Key Observations and Conclusions, Premium Cigars," dated 8-27-97	367
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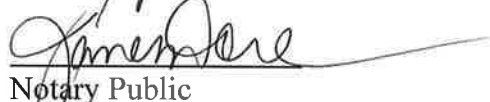


**DEPOSITION OF JOHN RANO**  
**New York, New York**  
**Wednesday, July 19, 2000**

**ERRATA SHEET**

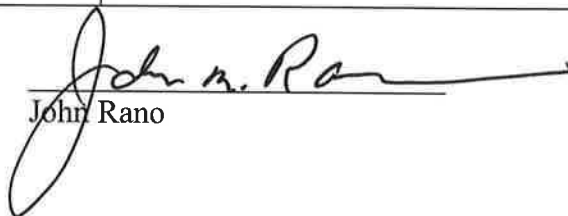
PAGE	LINE	CHANGE FROM:	CHANGE TO:
251	22	I know it was – I don't	I know it wasn't
255	19-20	To give him a sense of what was in the – what	To give him a sense of what the packaging looked like
259	20	No – I would have – no	No
274	21		Just what he saw
280	2	I had been not told --	I had not been told anything different
286	3	topography	typography
292	11	Okay. Then we gave him.	Okay. Then we gave him guidance
303	6	a set. I don't recall exactly if it was the	a third set. I don't recall exactly if there was a
320	4	I would – not specifically	Not specifically
330	9	Agreement	Argument
341	2	60 and 80 people	60 and 80% of the people
344	11	Because the variations	Because of the number of variations
345	16	Not --	No
351	17	-- In charge of that	-- In charge of information systems
356	9	Uses	Usage
376	19	Uses	Usage
428	25	West Connecticut	Western Connecticut or Massachusetts
431	10	Mary Beth	Maribeth

Sworn to before me this 22d  
day of Sept., 2000

  
Notary Public

JANET DORE  
Notary Public, State of New York  
No. 31-4807227  
Qualified in New York County  
~~Commission Expires March 30, 1996~~

8/31/02

  
John Rano



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309  
For the mark COHIBA  
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273  
For the mark COHIBA  
Date registered: June 6, 1995

	X	
EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
	X	

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition Transcript of John Rano,  
designated under Fed. R. Civ. P. 30(b)(6) and 45, dated December 21, 2001**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVue Nos. 138, 136, 135, 132, 91 and 89.

COPY

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IN THE UNITED STATES DISTRICT COURT

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FOR THE SOUTHERN DISTRICT OF NEW YORK

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EMPRESA CUBANA DEL TABACO, d.b.a.

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CUBATABACO,

7

Plaintiff,

97 Civ. 8399 (RWS)

8

vs.

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CULBRO CORPORATION and GENERAL

10

CIGAR CO., INC.,

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Defendants.

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-X

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VOLUME III

18

DEPOSITION OF JOHN RANO

19

New York, New York

20

Friday, December 21, 2001

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23

Reported by:

24

ANNETTE ARLEQUIN

CSR NO. 1450

25

1

2

December 21, 2001

3

10:15 a.m.

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Continued Rule 30(B)(6) and 45

6

deposition of JOHN RANO, Volume III, held at

7

the offices of RABINOWITZ, BOUDIN, STANDARD,

8

KRINSKY &amp; LIEBERMAN, P.C., 740 Broadway at

9

Astor Place, 5th Floor, New York, New York,

10

pursuant to Agreement, before ANNETTE

11

ARLEQUIN, a Certified Shorthand Reporter and

12

a Notary Public of the State of New York.

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## 2 A P P E A R A N C E S:

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4

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7 Attorneys for Plaintiff

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17 GEORGE DuPONT, ESQ.

18

19

20 A L S O P R E S E N T:

21

22 ROSS WOLLEN

23

24

25

1

2

IT IS HEREBY STIPULATED AND AGREED,

3

by and between the attorneys for the

4

respective parties herein, that filing and

5

sealing be and the same are hereby waived.

6

IT IS FURTHER STIPULATED AND AGREED

7

that all objections, except as to the form

8

of the question, shall be reserved to the

9

time of the trial.

10

IT IS FURTHER STIPULATED AND AGREED

11

that the within deposition may be sworn to

12

and signed before any officer authorized to

13

administer an oath, with the same force and

14

effect as if signed and sworn to before the

15

Court.

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1

2 J O H N R A N O, called as a witness,

3 having been duly sworn by a Notary Public,

4 was examined and testified as follows:

5 CONTINUED EXAMINATION

6 BY MR. GOLDSTEIN:

7 Q. Mr. Rano, you understand you're here

8 for another deposition because of documents that

9 were produced subsequent to your last

10 deposition?

11 A. No.

12 Q. No. Okay.

13 Well, the purpose of this deposition

14 is because additional documents have been

15 produced by General Cigar subsequent to your

16 last deposition.

17 Did you review any documents in

18 preparation for your deposition?

19 A. What deposition?

20 Q. Today's.

21 A. Yes.

22 Q. And can you describe the nature of

23 those documents?

24 A. They were just assorted documents,

25 some research, some memos.



1 Rano

2 correspondence concerning General Cigar's  
3 consideration of using the Cuban Cohiba trade  
4 dress prior to the fall of '92?

5 A. Specifically to the Cuban trade  
6 dress?

7 Q. Yes, the trade dress of the Cuban  
8 Cohiba.

9 A. Not specifically, no.

10 Q. Do you recall conversations or  
11 discussions at General Cigar prior to the fall  
12 of '92 of using trade dress similar if not  
13 absolutely identical to the Cuban Cohiba trade  
14 dress?

15 A. Yes.

16 Q. And what do you recall about that?

17 A. Just that we looked at the Cuba trade  
18 dress. We were under restrictions, that there  
19 were components of the trade dress that we were  
20 not allowed to use and that we had numerous  
21 types of marketing discussions regarding trade  
22 dress.

23 Q. Let me show you what was previously  
24 marked as Plaintiff's 406 and what was  
25 previously marked as Plaintiff's 397.

1 Rano

2 (Witness reviewing document.)

3 Q. Did you review either of these two  
4 documents in preparation for this deposition?

5 A. Not to the best of my recollection.

6 Q. The first one, Plaintiff's 406, is a  
7 memorandum from Ron Milstein to you and to  
8 Mr. McLoughlin dated December 9, 1991, and it  
9 says, "Enclosed find a letter on Cohiba from our  
10 trademark attorneys explaining the Cubatabaco  
11 registration. I'm here returning to the  
12 attorneys for John McLoughlin the box of Cuban  
13 Cohibas. It looks like we are out of luck on  
14 the use of the Indian head design. Please call  
15 me to discuss if you need to."

16 Do you see that?

17 A. Yes, I do.

18 Q. And do you recall that memoranda?

19 A. No, I don't.

20 Q. Do you recall on or about in December  
21 of '91 discussing at General Cigar the use of  
22 the Cuban Cohiba Indian head design?

23 A. My discussions regarding that with  
24 counsel was that it was always not available to  
25 us to be used.

1 Rano

2 look at page 19 --

3 Q. Sure.

4 A. -- which is --

5 Q. The second to last page, I believe.

6 A. Would that be 0088?

7 Q. Yes.

8 (Witness reviewing document.)

9 A. Okay.

10 Q. Mr. Milstein then writes, "I know

11 that from a marketing standpoint, the

12 recommended plan of action on page 19 of the

13 opinion is far from ideal. However, I would

14 caution very strongly against the introduction

15 of the brand with the Cubatabaco trade dress."

16 Do you recall discussing that?

17 A. I believe we had numerous discussions

18 throughout a very long period of time regarding

19 trade dress for Cohiba.

20 Q. Do you recall why from a marketing

21 standpoint the recommended plan of action not

22 using the Cubatabaco trade dress is far from

23 ideal?

24 A. I don't recall.

25 Q. You have no recollection sitting here

1 Rano

2 today as to why you wanted to use the Cubatabaco  
3 trade dress?

4 A. As I testified earlier, my  
5 understanding was that we were unable to use  
6 elements of the Cuban trade dress for the brand  
7 Cohiba from the very beginning and discussions  
8 were never about those elements.

9 Q. So you don't know why he's writing  
10 that inability to use the Cubatabaco trade dress  
11 is far from ideal from a marketing standpoint?

12 A. I don't.

13 Q. Do you recall any discussions at this  
14 time about obtaining written permission or a  
15 written statement from the Cubans that they  
16 would not object to your using the word  
17 "Cohiba" in the United States?

18 A. I recall vaguely discussions more in  
19 the genre of open conversation, floating ideas,  
20 not as an *a fait accompli* [sic].

21 Q. And what do you mean by that?

22 A. What I mean is that there were  
23 discussions in a very broad sense, in a very  
24 give-and-take sort of way about options that may  
25 or may not be open to us.

1 Rano

2 Q. Yes.

3 Do you recall anything about this  
4 document other than that you know General Cigar  
5 had it and that you reviewed it?

6 A. No.

7 MR. GOLDSTEIN: Can we mark this?

8 (Plaintiff's Exhibit 621, Document  
9 entitled "Premium Brands Promotional  
10 Spending, 1993-'96", marked for  
11 identification, as of this date.)

12 BY MR. GOLDSTEIN:

13 Q. I'm showing you a document that  
14 was -- been marked as Plaintiff's Exhibit 621.  
15 It has GC 22893 through GC 22895.

16 Did you review this document?

17 A. No.

18 Q. Do you know what it is?

19 A. I know what it is looking at it.

20 Q. It says, "Premium Brands Promotional  
21 Spending, 1993-'96" is the first page.

22 Is this something that was prepared  
23 by the marketing department?

24 A. It looks like it was.

25 Q. And that was your department?

1 Rano

2 A. That's -- yes.

3 Q. And the first page shows how much was  
4 spent promoting the premium brands over this  
5 four years, '93 to '96?

6 A. No.

7 Q. For advertising and promotion?

8 A. Yes.

9 Q. Advertising and promotion; is that  
10 correct?

11 A. Yes.

12 Q. And Cohiba is not listed?

13 A. That's correct. I do not see it.

14 Q. Do you know why Cohiba is not listed?

15 A. I don't.

16 Q. Is it because there was no  
17 promotional spending for Cohiba?

18 A. It could be.

19 Q. Do you know who prepared the  
20 document?

21 A. I don't.

22 Q. Do you know what it was prepared for?

23 A. Most likely a marketing presentation.

24 Q. Given in '97, do you recall?

25 A. I don't recall.

1 Rano

2 Q. You don't recall what it was in  
3 connection with other than probably in  
4 connection with a marketing presentation?

5 A. That's what it would have been used  
6 for.

7 MR. GOLDSTEIN: Let's take a few  
8 minutes.

9 (Recess is taken.)

10 BY MR. GOLDSTEIN:

11 Q. Let me show you what was previously  
12 marked as Plaintiff's 608, GC 22873 through  
13 22881.

14 MR. MILLER: Do you have an extra  
15 copy by any chance?

16 MR. GOLDSTEIN: I just have the one  
17 copy. In fact, this got lost. I could make  
18 another one of that. They were used the  
19 other day.

20 BY MR. GOLDSTEIN:

21 Q. The cover says "General Cigar Co.,  
22 Inc. 1996 Marketing Plan Update, March 21,  
23 1996."

24 This document was prepared by your  
25 department?

1 Rano

2 A. Yes.

3 Q. And under your direction and  
4 supervision?

5 A. Most likely.

6 Q. And do you recognize the handwriting  
7 on the front page?

8 A. I believe so.

9 Q. Whose is that?

10 A. I believe it's McNamara's.

11 Q. And this document is prepared towards  
12 the front end of the year for the purpose of  
13 showing your marketing plans for '96?

14 A. No.

15 Q. No? Okay.

16 It doesn't show the marketing plans  
17 for '96?

18 A. No.

19 Q. What does it show?

20 A. It's an update of segments of the  
21 marketing plan.

22 Q. Is there another marketing plan?

23 A. I would imagine there's a marketing  
24 plan, a major marketing plan.

25 Q. Is this -- is it your testimony that



1 Rano

2 not to be buried but to be postponed, and others  
3 are showing with a goal of '97; is that correct?

4 A. That's correct on this sheet of  
5 paper.

6 Q. And this sheet of paper at the time  
7 was accurate?

8 A. This particular sheet was just our  
9 best guess at it.

10 Q. Let me show you what was previously  
11 marked as Plaintiff's Deposition Exhibit 607.  
12 It's GC 22817 through 852, and the cover has a  
13 General Cigar logo and "General Cigar Co., Inc.,  
14 1997 Marketing Plan."

15 Did you review this document in  
16 preparation for your deposition?

17 A. No.

18 Q. Was this document prepared under your  
19 direction and supervision?

20 A. Yes.

21 Q. Do you know when it was -- if you  
22 turn to the third page. After the second page  
23 is like a tab and it says, "General Cigar Co.,  
24 Inc. Premium Brands 1997 Marketing Plan"?

25 A. Yes.

1 Rano

2 or forecasts?

3 A. No, it doesn't.

4 Q. Sitting here today, do you recall  
5 whether or not this document was done in '97 or  
6 '96?

7 A. I don't.

8 MR. GOLDSTEIN: Why don't we mark  
9 this.

10 (Plaintiff's Exhibit 622, Page  
11 entitled "Brand Strategies", marked for  
12 identification, as of this date.)

13 BY MR. GOLDSTEIN:

14 Q. Let me show you what we marked as  
15 Plaintiff's Exhibit 622, GC 22741, and as  
16 produced to us it's just this single page. On  
17 the top it says "Brand Strategies," and on the  
18 left it has various brands and the last one is  
19 Cohiba.

20 Looking at this document, have you --  
21 let me first ask, did you see this document in  
22 preparation for your deposition?

23 A. No.

24 Q. Do you know what this document is?

25 A. I know what it says.

1 Rano

2 you were attempting to send out through your ad  
3 campaign, position strategy?

4 A. Yes.

5 Q. Is it an accurate reflection?

6 A. Yes.

7 Q. Do you know if that type of document,  
8 that kind of page would be part of something  
9 else?

10 A. I couldn't say.

11 Q. Okay. Let me show you what was  
12 previously been marked as Plaintiff's Exhibit  
13 609, GC 20382 through 20394. The cover says  
14 "General Cigar Production Introductions 1997."

15 Did you see this document in  
16 preparation for your deposition?

17 A. No.

18 Q. Was this document prepared by your  
19 department?

20 A. Yes.

21 Q. And do you know what it was prepared  
22 for?

23 A. It was prepared as just what it  
24 states, as a fact sheet with all the specifics  
25 of the -- with most of the specifics of the

1 Rano

2 from Cuba when they could have been made  
3 anywhere in the world.

4 Q. In The Cambridge Group presentation,  
5 on E13 it states, "Substantial confusion exists  
6 over Dominican versus Cuban Cohibas."

7 Do you recall at the presentation  
8 discussing that statement?

9 A. I don't.

10 Q. Do you recall any analysis by General  
11 Cigar of the underlying data that led Cambridge  
12 Group to that conclusion?

13 A. No.

14 Q. Did General Cigar review that data  
15 regarding this conclusion?

16 A. Let me say this: General Cigar  
17 Company did not bring in The Cambridge Group.  
18 The Cambridge Group was brought in by -- the  
19 division General Cigar Company did not bring in  
20 The Cambridge Group. Somebody else recommended  
21 The Cambridge Group come to General Cigar  
22 Company. They made a presentation, we were  
23 asked to attend the presentation. We attended  
24 the presentation. We did not -- most of the  
25 information was regurgitated information that we

1                   Rano  
2    already had, and other information, such as the  
3    point that you just made, we felt was not of  
4    any -- was not accurate nor of any value to us.  
5    We met with them. I personally met with them  
6    once. I never reviewed the document if I had  
7    it, which I don't recall, or talked about it  
8    again.

9           Q.    Did -- General Cigar paid for the  
10   work that The Cambridge Group did; is that  
11   correct?

12          A.    I don't know that.

13          Q.    Am I correct, then, that General  
14   Cigar never reviewed the underlying data that  
15   The Cambridge Group relied upon for the  
16   statement that "Substantial confusion exists  
17   over Dominican versus Cuban Cohibas"; is that  
18   correct?

19          A.    As I just testified, we did not  
20   believe some of the data to be accurate. We did  
21   not dwell on it after that because of that  
22   reason. It was erroneous statements.

23          Q.    What did --

24          A.    Did not believe.

25          Q.    Did General Cigar do any of its own

1 Rano

2 market research to challenge or to test The  
3 Cambridge Group statement of substantial  
4 confusion between the Dominican and the Cuban  
5 Cohiba?

6 A. I don't recall if we did anything  
7 specifically for that.

8 Q. Do you recall any assessment at  
9 General Cigar of the accuracy of the statement  
10 about the Dominican versus -- about the  
11 confusion statement?

12 A. I can only tell you my assessment;  
13 that it was, it was -- a presentation was made  
14 by a group of people that had a viewpoint that I  
15 certainly as the head of marketing did not hold  
16 to be accurate in many cases, specifically the  
17 confusion issue here.

18 Q. Do you recall discussing that with  
19 anybody at General Cigar?

20 A. Not specifically, no.

21 Q. Were any attorneys present at this  
22 presentation, do you recall?

23 A. Not that I recall.

24 Q. Do you recall if Mr. Wollen was  
25 present?

1 Rano

2 A. I don't recall if he was present.

3 Q. Do you know if Mr. Webber was  
4 present?

5 A. I don't recall.

6 Q. Do you recall discussing with  
7 attorneys after the presentation, the statement  
8 by The Cambridge Group of substantial confusion  
9 between the Dominican and the Cuban Cohiba?

10 A. No.

11 Q. Did you discuss this with  
12 Mr. Cullman, Jr?

13 A. The only discussion I had with  
14 Mr. Cullman, Jr. was in his office five minutes  
15 after The Cambridge Group's presentation was,  
16 and I asked him what we were doing listening to  
17 this stuff.

18 Q. And what did he say?

19 A. He shook his head in agreement.

20 Q. Did you question The Cambridge Group  
21 regarding the data upon which they based their  
22 statement of substantial confusion between the  
23 Dominican and Cuban Cohiba?

24 A. I did not for the reason was that The  
25 Cambridge Group was not a group that was hired

1                                   Rano  
2    by the marketing department of General Cigar  
3    Company. It was not hired by the division  
4    General Cigar Company. We were asked to be  
5    participants in a presentation. We sat through  
6    the presentation. I made my assessment. My  
7    assessment is the assessment I just testified to  
8    to Mr. Cullman, Jr. and that to me was the end  
9    of it.

10           Q.    To your knowledge, was that the end  
11   of it for General Cigar as well?

12           A.    To my knowledge, it was.

13           Q.    Do you recall whether there were any  
14   discussions with other outside consultants to  
15   test or assess or validate these conclusions by  
16   The Cambridge Group regarding confusion between  
17   the Dominican and the Cuban Cohiba?

18           A.    No, I don't.

19           Q.    Did General Cigar change its  
20   advertising or promotion of its Cohiba in light  
21   of anything that The Cambridge Group told them?

22           A.    No.

23           Q.    Did it change its packaging or any  
24   other trade dress elements in light of what The  
25   Cambridge Group told them?



1 Rano

2 A. No.

3 Q. Did it speak to retailers about  
4 possible issues of confusion following The  
5 Cambridge Group presentation?

6 A. No.

7 What it did do was aggressive -- in  
8 its field sales force when they saw counterfeit  
9 quote slash illegal Cohiba cigars in the  
10 marketplace, we were very aggressive in trying  
11 to trace and track down the suppliers of those  
12 cigars.

13 Q. Did you do anything else with the  
14 retailers in response to the report about  
15 substantial confusion existing between the  
16 Dominican versus Cuban Cohibas?

17 MR. MILLER: Objection as to form.

18 MR. GOLDSTEIN: Let me rephrase the  
19 question.

20 BY MR. GOLDSTEIN:

21 Q. Did you speak to the retailers about  
22 The Cambridge Group's conclusion about there  
23 being substantial confusion between the  
24 Dominican and Cuban Cohibas?

25 A. Not only did we not talk to them

1

Rano

2

about it, as I testified earlier, I did not

3

believe the statement to be anywhere near an

4

accurate portrayal of what was taking place in

5

the marketplace.

6

The word confusion is not a

7

particular good word here. What was happening

8

quite simply was with the shortage of cigars

9

from what I would call legitimate or

10

manufacturers who own brand names that couldn't

11

supply enough cigars, other people supplied

12

cigars under, in this particular case, under the

13

Cohiba name that were not authorized to do so.

14

They were damaging or potentially had the

15

opportunity to damage the name that General

16

Cigar owned, being Cohiba. We were aggressive

17

in fighting that through any illegal means

18

or legal means that we had.

19

Q. Did you have any other market

20

research, quantitative or qualitative, that

21

addressed this question of whether there was

22

confusion between the Dominican and the Cuban

23

Cohiba?

24

MR. MILLER: Asked and answered.

25

MR. GOLDSTEIN: No. I asked if he did

1 Rano

2 anything after this.

3 BY MR. GOLDSTEIN:

4 Q. Then the question is did you have any  
5 other market research, not that you did in  
6 response to this, but did you have other market  
7 research that addressed the question of  
8 confusion between the Cuban and Dominican  
9 Cohiba?

10 A. No. Not that I recall.

11 (Mr. Wollen leaves the deposition at

12 12:00 p.m.)

13 (Recess is taken.)

14 BY MR. GOLDSTEIN:

15 Q. Going back to The Cambridge Group  
16 presentation document, the Plaintiff's 604, you  
17 said that General Cigar Co. subsidiary had not  
18 hired them; is that correct?

19 A. Let me --

20 Q. Do you know who hired them?

21 A. I know it wasn't the marketing  
22 department of General Cigar Company, okay?

23 I don't know where they were paid  
24 from or how they were paid or anything of that  
25 nature, okay? So I don't know that.

1 Rano

2 Q. You don't know whether it was the  
3 parent that hired them or another division  
4 within, you know, another group within Cigar  
5 Company?

6 A. I don't know for certain how they got  
7 there.

8 Q. Okay. Do you have an understanding  
9 if it's not for certain?

10 A. Yes.

11 Q. And what is that?

12 A. I believe a person by the name of  
13 Judy Harrison introduced them to the  
14 corporation.

15 Q. And Judy Harrison was at the  
16 corporation?

17 A. She was head of a division in the  
18 corporation.

19 Q. And you said you were told to go to  
20 this meeting and so you went?

21 A. We were asked to attend.

22 Q. Who asked you?

23 A. I don't recall.

24 Q. If you look at Plaintiff's Exhibit

25 613, GC 20861 through 866.

1 Rano

2 (Witness complies.)

3 Q. Did you review this document prior to  
4 your deposition?

5 A. Yes.

6 Q. And do you know what this -- can you  
7 identify this document?

8 A. Yes.

9 Q. What is it?

10 A. It's a facsimile of pages that will  
11 appear in a catalog of a retailer, in a mail  
12 order house.

13 Q. And the retailer is?

14 A. A famous Smoke Shop.

15 Q. They're also a shop and a catalog or  
16 are they just a catalog? In other words, do  
17 they have a retail store?

18 A. At this time they did have a retail  
19 store.

20 Whether they do now or not, I'm not  
21 sure.

22 Q. And where was the store, do you  
23 recall?

24 A. Yeah.

25 Q. In New Jersey?

1 Rano

2 A. I recall a discussion with  
3 Mr. Perlstein about it. Not specifically this.

4 Q. The "file Famous," is that your  
5 handwriting on that?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes.

9 Q. Where it says "Changes as requested,  
10 is that changes you requested or changes that  
11 Famous requested?

12 A. It says "If you have any comments,"  
13 "Faxes show type, no photos. Changes as  
14 requested." Those were probably changes we  
15 requested.

16 Q. And did Famous run its catalog by you  
17 for your brands before they put them in?

18 A. Not always.

19 Q. Do you know why they ran this one by  
20 you?

21 A. I don't recall.

22 Q. Do you know who prepared the text for  
23 their catalog?

24 When I say "who," meaning was it  
25 prepared on the Famous side or was it prepared

1 Rano

2 and your prior testimony will speak for  
3 themselves, so I object to sort of these  
4 rhetorical responses. You know, whether  
5 they'll be admissible as evidence or not  
6 will be up to the judge, but what I don't  
7 want to do is reopen the whole deposition  
8 based on these rhetorical responses. We  
9 went through this in a much more confined  
10 and elaborate way.

11 So, you know, as a formality, I'm  
12 moving to strike these statements both as  
13 nonresponsive and outside the scope of the  
14 deposition, because I really don't want to  
15 keep him here for four hours going through  
16 stuff we already went through so understand  
17 and leave it at that.

18 MR. MILLER: I appreciate your efforts  
19 to shorten this. I do just want the record  
20 to reflect many of the references you're  
21 referring to, his statements were necessary  
22 to fully and adequately explain his answers.

23 BY MR. GOLDSTEIN:

24 Q. Did you engage in pre-publication  
25 review of any catalogs, cigar catalogs other

1 Rano

2 than Famous while you were in marketing at  
3 General Cigar?

4 A. I believe we did -- I believe we did  
5 it in a couple of situations.

6 Q. Do you recall doing it for any  
7 catalogs with regard to the Cohiba brand?

8 A. I believe we did it with Dunhill.

9 Q. Prior to the '97 launch or after the  
10 '97 launch?

11 We have some documents which I may  
12 have reviewed with you, I don't recall, that are  
13 catalogs prior -- when they had the exclusive.

14 Are you referring to that or are you  
15 referring to post '97?

16 A. I believe it's the first.

17 Q. And you believe you had engaged in  
18 pre-publication review of those?

19 A. I believe so.

20 Q. Do you recall having any discussions  
21 or comments with them regarding that?

22 A. I don't recall any specific.

23 Q. Do you recall any other  
24 pre-publication review of cigar catalogs of your  
25 retailers?



1 Rano

2 A. I can't recall.

3 Q. Did you have a practice of reviewing  
4 the catalogs of your major retailers after  
5 publication?

6 A. We would look at them, yes.

7 Q. Do you recall which ones, like the  
8 major ones?

9 A. J.R., Famous, Mike's, Thompson.

10 Q. Do you recall reviewing Holtz?

11 A. I don't recall reviewing Holtz.

12 Q. Do you recall ever commenting to them  
13 on the way they were positioning your, any of  
14 your premium cigars?

15 A. Yes.

16 Q. Do you recall that with respect to  
17 Cohiba?

18 A. Yes.

19 Q. And what do you recall with respect  
20 to Cohiba?

21 A. That we did not want the Cohiba brand  
22 in catalogs where it was going to be discounted.

23 Q. You were trying to keep the super  
24 premium pricing and image.

25 A. That's correct.

1 Rãno

2 Q. Do you recall anything else with  
3 regard to Cohiba and your retailers' catalogs?

4 A. No.

5 Q. Did you review how the retailers were  
6 presenting your cigar on, your premium brands,  
7 on websites?

8 A. I didn't.

9 Q. Do you know if that was being done at  
10 General Cigar?

11 A. Not that I know of.

12 Q. Did you ever provide the retailers in  
13 advance, for want of a better term, speaking  
14 points or an outline of what you wanted them to  
15 be saying about your brands?

16 A. Not that I recall.

17 Q. I'm showing you what was previously  
18 marked as Plaintiff's Exhibit 605. It's a  
19 document with the heading, "The Cambridge Group"  
20 on the cover and it runs from GC 19583 through  
21 GC 19738. And the first two pages are  
22 essentially cover pages which say "The Cambridge  
23 Group," and the third page, GC 19585, has the  
24 date November 24, 1998, "General Cigar Co.  
25 Premium Brand Strategy Work Session."

1 Rano

2 outside the deposition room.)

3 MR. GOLDSTEIN: Did you want to put  
4 that clarification on the record?

5 MR. MILLER: Yeah, sure. You want me  
6 to?

7 Just to clarify the record, Mr. Rano  
8 was very briefly shown Exhibit 604 in his  
9 preparation and was also shown 605 in his  
10 preparation, and that should clarify any  
11 ambiguity that appears in the record.

12 BY MR. GOLDSTEIN:

13 Q. Okay. Let's turn, then, to 605, the  
14 November 24, 1998 document, which is --

15 MR. MILLER: Do you mind if I just add  
16 one thing to that last statement on the  
17 record?

18 MR. GOLDSTEIN: Go right ahead.

19 MR. MILLER: That clarification in no  
20 way waived any privilege from that meeting.

21 MR. GOLDSTEIN: We agree to that.

22 BY MR. GOLDSTEIN:

23 Q. The second document, Plaintiff's 605  
24 from The Cambridge Group, November 24, 1998  
25 strategy work session, you believe you did

1 Rano

2 attend that work session.

3 A. I do.

4 Q. Okay. And do you recall discussions  
5 regarding Cohiba from that work session?

6 A. I don't.

7 Q. Did you review the document in  
8 preparation for your deposition, Plaintiff's  
9 605?

10 I'm asking not if you read it, how  
11 many pages --

12 A. I believe I saw it.

13 Q. Okay. We'll leave it at that.

14 Do you recall what the purpose of the  
15 work session was?

16 A. From The Cambridge Group?

17 Q. Yes.

18 A. I believe it was a presentation to  
19 us.

20 Q. Okay. Do you recall what the purpose  
21 of the presentation was; in other words, what  
22 they were doing at that point?

23 A. I believe The Cambridge Group was  
24 hired by somebody and they were trying to get --  
25 they were trying to do business with General

1 Rano

2 Cigar Company. They were given this charge to  
3 do this. I don't know what the exact charge  
4 was, but then they came in and made a  
5 presentation. They were doing -- they were just  
6 doing -- they were just making a presentation of  
7 their findings.

8 Q. Okay. And do you recall who else  
9 from senior management was present?

10 A. No. That goes back to my earlier  
11 testimony regarding 604, it would be the same  
12 thing here.

13 Q. So in your prior testimony, looking  
14 at 604 but thinking about this later one, you  
15 said that you believed Cullman, Jr. was present.

16 A. I do.

17 Q. And do you believe -- do you recall  
18 whether Mr. Danziger was present?

19 A. I don't.

20 Q. Was there a parallel person for you  
21 in sales at that time, late '98?

22 A. No. I was the person in sales.

23 Q. You were marketing and sales at that  
24 point or you had now moved over to sales?

25 A. I had now moved over to -- late '98 I

Rano

(Time noted: 1:15 p.m.)

JOHN RANO

Subscribed and sworn to before me

this      day of      , 2002.

1

2

## C E R T I F I C A T E

3

4

STATE OF NEW YORK )

5

: ss.

6

COUNTY OF NEW YORK )

7

8

I, ANNETTE ARLEQUIN, a Shorthand

9

Reporter and Notary Public within and for

10

the State of New York, do hereby certify:

11

That JOHN RANO, the witness

12

whose deposition is hereinbefore set forth,

13

was duly sworn by me and that such

14

deposition is a true record of the

15

testimony given by the witness.

16

I further certify that I am not

17

related to any of the parties to this

18

action by blood or marriage, and that I am

19

in no way interested in the outcome of this

20

matter.

21

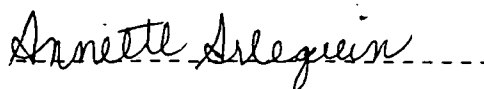
IN WITNESS WHEREOF, I have hereunto

22

set my hand this 6th day of January, 2002.

23

24



ANNETTE ARLEQUIN, CSR, RPR

25

My commission expires:

6/30/02

1

2

## ----- I N D E X -----

3

WITNESS

EXAMINATION BY

PAGE

4

5

JOHN RANO

MR. GOLDSTEIN

440

6

7

8

## ----- EXHIBITS -----

9

PLAINTIFF'S

PAGE

10

Plaintiff's Exhibit 621, Document

477

11

entitled "Premium Brands Promotional  
Spending, 1993-'96"

12

Plaintiff's Exhibit 622, Page entitled

487

13

"Brand Strategies"

14

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 5                                    DATE OF DEPOSITION: DECEMBER 21, 2001  
 6                                    WITNESS: JOHN RANO

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18  
 19                                    \_\_\_\_\_  
                                     JOHN RANO

20                                    Subscribed and sworn to before me  
 21                                    this        day of        , 2002.

22                                    \_\_\_\_\_  
                                     (Notary Public)

                                    My Commission Expires:

23  
 24  
 25

A				
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

-----	X	
EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
-----	X	

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition Transcript of Peter Rosenthal,  
designated under Fed. R. Civ. P. 30(b)(6), dated May 25, 2000**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 138, 136, 135, 132, 91 and 89.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff,

vs.

97 Civ. 8399 (RWS)

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

**ORIGINAL**

-----X

Rule 30(B)(6) DEPOSITION OF PETER ROSENTHAL

New York, New York

Thursday, May 25, 2000

Reported by:  
ANNETTE ARLEQUIN  
CSR NO. 1450  
JOB NO. 108788

  
**ESQUIRE**<sup>TM</sup>  
DEPOSITION SERVICES

216 East 45th Street, 8th Floor  
New York, NY 10017-3304  
212.687.8010 • 800.662.3287  
Fax 212.557.5972

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May 25, 2000

12:10 p.m.

Rule 30(B)(6) deposition of PETER  
ROSENTHAL, held at the offices of  
RABINOWITZ, BOUDIN, STANDARD, KRINSKY &  
LIEBERMAN, P.C., 740 Broadway at Astoria  
Place, 5th Floor, New York, New York,  
pursuant to Notice/Subpoena, before ANNETTE  
ARLEQUIN, a Certified Shorthand Reporter and  
a Notary Public of the State of New York.



1

2 A P P E A R A N C E S :

3

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10

11

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13 Attorneys for Defendants

14 345 Park Avenue

15 New York, New York 10154-0053

16 BY: JANET DORE, ESQ.

17

18

19 A L S O P R E S E N T :

20

21 A. ROSS WOLLEN, Senior Vice President,  
22 General Counsel & Secretary, General Cigar  
23 Holdings, Inc.

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IT IS HEREBY STIPULATED AND AGREED,  
by and between the attorneys for the  
respective parties herein, that filing and  
sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form  
of the question, shall be reserved to the  
time of the trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be sworn to  
and signed before any officer authorized to  
administer an oath, with the same force and  
effect as if signed and sworn to before the  
Court.

1  
2 P E T E R R O S E N T H A L, called as a  
3 witness, having been duly sworn by a Notary  
4 Public, was examined and testified as  
5 follows:

6 EXAMINATION BY

7 MR. GOLDSTEIN:

8 (Plaintiff's Exhibit 47, Subpoena and  
9 request for documents, marked for  
10 identification, as of this date.)

11 BY MR. GOLDSTEIN:

12 Q. Please state your name and address for  
13 the record.

14 A. Peter Rosenthal. My home address or  
15 business address?

16 Q. Business address is fine.

17 A. 1345 Avenue of the Americas, New York,  
18 New York, 10105.

19 Q. And you are currently employed by  
20 Rubenstein Associates?

21 A. Yes.

22 Q. Have you ever been deposed before?

23 A. Yes.

24 Q. Approximately how many times?

25 A. Two or three.

1 Rosenthal

2 those documents, whether they went to 1998?

3 A. I do not.

4 Q. Do you know if they were from 1998 at  
5 all?

6 A. I don't remember.

7 Q. Okay. And you don't know whether what  
8 was produced to me is what you produced to Morgan  
9 & Finnegan?

10 A. No.

11 Q. How long have you been with the  
12 Rubenstein Associates firm?

13 A. Twenty-four years.

14 Q. And what is your position there?

15 A. Senior executive vice president.

16 Q. And how long have you held that  
17 position?

18 A. Eight or ten years.

19 Q. Do you know when Rubenstein Associates  
20 first did work for General Cigar?

21 A. No. I know roughly when I first did  
22 work for General Cigar.

23 Q. And when was that?

24 A. Around 1995.

25 Q. Do you know if Rubenstein was doing

1 Rosenthal

2 Q. Do you know when Rubenstein Associates  
3 began to do work for General Cigar on Cohiba  
4 matters?

5 A. I believe it was 1997, several  
6 months.

7 Q. And who was involved in the project  
8 from your firm?

9 A. Myself, Evan Cooper and Kathy Lynn.

10 Q. And do you recall whether you attended  
11 an initial meeting with Mr. Rano at General  
12 Cigar, or was it somebody else from the company  
13 attended?

14 A. I don't recall.

15 MR. GOLDSTEIN: Why don't we mark  
16 this -- oh, it's already marked. That's  
17 fine.

18 BY MR. GOLDSTEIN:

19 Q. Let me show you what's already been  
20 marked as Plaintiff's Exhibit 46, and it's a  
21 memorandum from Evan Cooper to John Rano.

22 This is Evan Cooper of your office?

23 A. Yes.

24 Q. And it's dated April 7th, 1997.  
25 Have you seen this memo before?

1 Rosenthal

2 this meeting?

3 A. No.

4 Q. I take it Mr. Cooper, do you know when  
5 he left the firm?

6 A. Sometime between 18 months and 24  
7 months ago.

8 Q. Do you know if he's in the city?

9 A. I don't know.

10 Q. You have no recollection of him  
11 reporting to you on what happened at the meeting?

12 A. Not in any detail, no.

13 Q. Subsequent to this meeting, do you  
14 recall what Rubenstein Associates did with  
15 respect to this Cohiba launch or Cohiba project?

16 MS. DORE: Can I hear that question  
17 back?

18 I missed the beginning. I'm sorry.

19 (Question was read back as follows:

20 "QUESTION: Subsequent to this  
21 meeting, do you recall what Rubenstein  
22 Associates did with respect to this Cohiba  
23 launch or Cohiba project?")

24 BY MR. GOLDSTEIN:

25 Q. I don't mean everything. What I mean

1 Rosenthal

2 is the next thing.

3 A. Well, for a period of months there was  
4 nothing to do in regard to it, and then sometime  
5 later, probably late spring, early summer when  
6 the company's plans coalesced, we were asked to  
7 devise a program strategy to support this effort  
8 by securing publicity for the introduction.

9 Q. Was this conveyed to you directly from  
10 General Cigar?

11 A. No, through our staff.

12 Q. Through either Mr. Cooper or Ms. Lynn?

13 A. Probably Mr. Cooper.

14 Q. Would you say that Mr. Cooper was the  
15 lead contact with General Cigar?

16 A. The day-to-day.

17 Q. The day-to-day contact?

18 A. On these kinds of matters, yes.

19 Q. Did you ever have any discussions with  
20 General Cigar about this launch?

21 A. If I did, it was only very much in  
22 summary of where we stood at a given point in  
23 time and what our timetable would be for the next  
24 limited period of time.

25 Q. Do you recall meeting face to face

1 Rosenthal

2 A. I don't.

3 Q. And do you recall anything that was  
4 told by McCaffrey to Rubenstein regarding the  
5 advertising strategy?

6 A. I don't.

7 Q. Are you aware of any communications  
8 between McCaffrey and Rubenstein concerning the  
9 Cuban Cohiba?

10 A. No.

11 Q. Or regarding how to present General  
12 Cigar's cigar in relation to the Cuban cigar?

13 A. No.

14 MR. GOLDSTEIN: Let me mark this.

15 (Plaintiff's Exhibit 49, Memorandum  
16 dated 7-28-97 from Cooper and Lynn to  
17 Rosenthal, marked for identification, as of  
18 this date.)

19 BY MR. GOLDSTEIN:

20 Q. I'm showing up a document that's been  
21 marked as Plaintiff's Exhibit 49. It's a  
22 memorandum dated July 28th, 1997 from Evan Cooper  
23 and Kathy Lynn to you, and I ask you if you  
24 recall seeing this memo.

25 (Witness reviewing document.)



1 Rosenthal

2 A. Yes.

3 Q. Do you recall if the redacted portions  
4 of the document concern things unrelated to  
5 Cohiba?

6 A. Unrelated.

7 Q. It makes reference to the Cohiba being  
8 introduced to retailers at the trade show earlier  
9 in July, what's been called the RTDA, which I  
10 believe is the Retail Tobacco Dealers  
11 Association.

12 Did anybody from Rubenstein attend  
13 that trade show?

14 A. I don't believe so.

15 Q. Did Rubenstein have any involvement in  
16 what General Cigar did at that trade show with  
17 regard to the Cohiba?

18 A. No.

19 Q. In the middle of that paragraph, the  
20 writers of the memo state, "We met with their ad  
21 agency and learned the theme of the campaign, as  
22 well as its visual look."

23 What was the theme of the campaign?

24 A. I don't know.

25 Q. Does Rubenstein know what the theme of

1 Rosenthal

2 A. No.

3 Q. Then the memo goes on to say, "Our  
4 immediate efforts will involve..." and then it  
5 specifies several things. "Sending out material  
6 about the cigar to the appropriate press."

7 What material about the cigar?

8 A. Press materials that would be  
9 prepared, news releases, fact sheets that we  
10 would draft subject to client input and then  
11 final approval.

12 Q. What was the source for the material  
13 about the cigar?

14 A. The client.

15 Q. And do you recall what material the  
16 client provided about the cigar?

17 A. I don't.

18 Q. And then it says, "We'll also pitch  
19 stories about the unique advertising campaign to  
20 dailies, ad trades and cigar trades."

21 A. Yes.

22 Q. What was unique about the advertising?

23 A. I don't recall, but that is a normal  
24 activity in product publicity, to help support  
25 and extend the publicity by securing coverage in

1 Rosenthal

2 A. I recall seeing some draft materials  
3 designed to pitch those things, but I don't  
4 recall specifically what they are.

5 Q. In the first sentence of the memo it  
6 says, "Kathy and I have met with General Cigar's  
7 advertising agency."

8 A. Yes.

9 Q. Do you know who they met with?

10 A. I don't.

11 Q. Did they --

12 A. Do you mean by name?

13 Q. Yes.

14 A. I don't.

15 Q. Did they report to you the contents of  
16 the conversation of the meeting other than in the  
17 form of this memo?

18 A. No.

19 Q. Do you know anything about that  
20 meeting other than what's in this memo?

21 A. I don't.

22 Q. What's a pitch letter?

23 A. A pitch letter is a letter one writes  
24 to a reporter or editor to try to get them  
25 interested in covering a story or writing a story

1 Rosenthal

2 about a given subject.

3 Q. Were pitch letters sent as part of the  
4 General Cigar Cohiba launch?

5 A. Pitch letters were sent.

6 MR. GOLDSTEIN: Can we mark this.

7 (Plaintiff's Exhibit 50, Letter dated  
8 9-4-97 from Cooper, marked for  
9 identification, as of this date.)

10 BY MR. GOLDSTEIN:

11 Q. I'm showing you what's been marked as  
12 Plaintiff's Exhibit 50, which is a September 4,  
13 1997 letter from Evan Cooper to Ms. Ellen  
14 Newborne at Business Week in New York, New York.

15 I'd ask you to take a look at it and  
16 ask you if this is a or the pitch letter.

17 (Witness reviewing document.)

18 A. Yes, it certainly seems to be.

19 Q. And do you know if this letter was  
20 sent to Ms. Newborne?

21 A. I believe it was.

22 Q. In the first paragraph -- let me ask  
23 you this: Do you know who else got this letter,  
24 what other media got this letter?

25 A. I don't. If there were a list that

1 Rosenthal

2 survived, it would have been in the materials.

3 Q. Okay. There are lists that refer to  
4 various elements of --

5 A. There would have been a variety of  
6 different types of lists, that's right.

7 Q. Would there have been other letters  
8 than this that would have gone out, or would you  
9 say that is the pitch letter, or do you recall  
10 whether there's --

11 A. There could very well been variations  
12 of this.

13 Q. Would this have been approved by the  
14 client before it went out?

15 Let me ask you this way: Was this  
16 approved by the client before it went out?

17 A. I don't know.

18 Q. Would it have been your practice to  
19 have it approved by the client?

20 A. That the significant fact points in  
21 the letter it would have been our practice to  
22 have approved.

23 Q. Do you know who at General Cigar  
24 reviewed the pitch letter?

25 A. I don't have knowledge of that, no.

1 Rosenthal

2 A. It distinguishes the General Cigar  
3 product. If the reporter has some confusion, it  
4 clarifies it immediately. It just lays out the  
5 story quite simply and quite concisely.

6 Q. Why was there any need to even refer  
7 to the Cuban Cohiba?

8 A. In the event the reporter had been  
9 aware of it, why keep it a secret?

10 Q. Isn't it because, in fact, reporters  
11 who would be covering this would be aware of it?

12 MS. DORE: If you know what the  
13 reporter was aware of.

14 A. There's no way to ever know what an  
15 individual may or may not be aware of, but there  
16 is no such beat as the cigar beat in any major  
17 business publication in America, okay?

18 Reporters cover, such as this, cover  
19 marketing, all right? They're interested in how  
20 you bring something to market.

21 Q. And describing the Cuban Cohiba as  
22 Fidel Castro's personal cigar, was that part of  
23 the pitch that you were making to the  
24 newspapers?

25 A. Keeps her reading, positions, that's

1 Rosenthal

2 all it does. It takes no credit for anything.

3 Q. It's interesting that it was Fidel

4 Castro's personal cigar?

5 A. It could be.

6 Q. And that was part of why you put it in

7 there?

8 MS. DORE: I think the witness already

9 answered why he put it in there.

10 BY MR. GOLDSTEIN:

11 Q. Is that why you put it in there?

12 A. It keeps the reader reading.

13 Q. Was there any discussion about whether

14 to put in that it was Fidel Castro's personal

15 cigar?

16 A. Not that I had.

17 Q. Was there any discussion about

18 pitching this sentence in a way that would get

19 the reader interested through the reference to

20 the Cuban Cohiba?

21 A. The letter stands in its entirety, not

22 one -- no one individual phrase.

23 Q. Okay.

24 A. It tells the story. The letter in its

25 entirety does.

1 Rosenthal

2 A. The information came from the  
3 company.

4 Q. If you look at the second sentence of  
5 the second paragraph, it says, "The fact that the  
6 brand name may have high awareness and prestige,  
7 although the product itself generally has been  
8 unavailable, adds to the unusual nature of the  
9 launch."

10 The "higher awareness and prestige,"  
11 is that referring to the Cuban Cohiba?

12 A. I took it to mean referring to the  
13 General Cigar Cohiba.

14 Q. It was your understanding that the  
15 General Cigar Cohiba, prior to the launch, had  
16 higher awareness and prestige?

17 A. That was my understanding.

18 Q. And who gave you that understanding?

19 A. The company.

20 Q. The company told you that their cigar  
21 had high awareness and prestige?

22 A. That it was sought after and that they  
23 had never been able to produce enough to meet the  
24 demand.

25 Q. And who from the company told you



1 Rosenthal

2 that?

3 A. I don't recall.

4 Q. Do you recall when they told you that?

5 A. I don't.

6 Q. Were you aware of any media that had  
7 described General Cigar's Cohiba as a prestigious  
8 cigar?

9 A. I don't recall.

10 Q. Did General Cigar direct you to any  
11 media or other public sources of information that  
12 would support that statement?

13 A. Not that I recall.

14 Q. Am I correct that Mr. Cooper drafted  
15 this in the first instance?

16 A. Yes.

17 Q. And it's your understanding that he  
18 was not referring to the Cuban cigar?

19 A. That he was not.

20 Q. That he was not referring to the Cuban  
21 cigar by high awareness and prestige although  
22 generally unavailable?

23 A. I told you the way I read it. If the  
24 reference would have been -- the way I read it,  
25 if the reference would be to the Cuban cigar, it

1 Rosenthal

2 would not be generally unavailable, it would be  
3 completely unavailable in the U.S.

4 Q. Were you aware --

5 A. There's a better way -- there's a more  
6 concise way to state it if that was the point one  
7 wanted to make.

8 Q. Is it your understanding that the  
9 Cuban Cohiba was completely unavailable in the  
10 United States?

11 A. That's what my understanding of the  
12 law is, yes.

13 Q. You weren't aware that travelers to  
14 Cuba could legally bring back a certain amount of  
15 Cuban Cohibas?

16 A. It was my understanding one wasn't the  
17 supposed to do that.

18 Q. And where does that understanding come  
19 from?

20 A. General reading knowledge.

21 Q. Do you have any knowledge of whether  
22 Cuban Cohibas were available in the United  
23 States?

24 A. No.

25 Q. So you don't know whether the

1 Rosenthal

2 statement "generally unavailable" is a true or  
3 false statement as to Cuban Cohibas?

4 A. No, but I didn't --

5 MS. DORE: The witness just testified  
6 that the statement "generally unavailable"  
7 was a statement referring to the General  
8 Cigar Cohiba.

9 MR. GOLDSTEIN: No. He said that was  
10 his understanding. And his understanding as  
11 I understood him was that it would have said  
12 completely unavailable had it referred to  
13 the Cuban Cohiba.

14 A. Yes,.

15 THE WITNESS: That was my  
16 interpretation when I read the draft, and  
17 that if the desire was to state -- was  
18 referencing the Cuban Cohiba, it would have  
19 said unavailable in the U.S. It didn't need  
20 to qualify it.

21 BY MR. GOLDSTEIN:

22 Q. But sitting here today, you don't  
23 know, in fact, whether the Cuban Cohiba was  
24 completely unavailable or generally unavailable?

25 A. I don't know in fact.

1 Rosenthal

2 Q. Do you recall any instructions from  
3 Rubenstein that it was in no way to link the  
4 Cuban Cohiba with the General Cigar Cohiba?

5 A. I'm sorry. Would you repeat that?

6 Q. Do you recall any instructions from  
7 General Cigar that Rubenstein was in no way to  
8 link the Cuban Cohiba with the General Cigar  
9 Cohiba?

10 A. I did not receive any such  
11 instructions.

12 Q. Did you receive any instructions that  
13 you were not supposed -- that you were not to  
14 refer to the Cuban Cohiba in promoting the  
15 General Cigar Cohiba?

16 A. I did not.

17 Q. Did you receive any instructions that  
18 you were to disassociate the General Cigar Cohiba  
19 from the Cuban Cohiba?

20 A. I did not.

21 Q. The purpose of a pitch letter, I take  
22 it, is to generate media interest in your  
23 client's product?

24 A. To generate media interest in  
25 exploring writing a story about something.

1 Rosenthal

2 (Plaintiff's Exhibit 51, Letter from  
3 Buhner to Lynn, marked for identification,  
4 as of this date.)

5 BY MR. GOLDSTEIN:

6 Q. Showing you again Plaintiff's Exhibit  
7 51, do you know who drafted it?

8 A. This is the same. This is the,  
9 virtually the same letter as the previous letter  
10 with substitution in one or two places.

11 Q. And would it have gone through the  
12 same review process as the other letter?

13 A. The review process would have been for  
14 the general facts and positioning. Not each and  
15 every letter that was sent bore the details of a  
16 party, et cetera, okay? So each letter would not  
17 have been subject to the approval process.

18 Q. Okay. So just the general letter  
19 then?

20 A. The general content of the letter.

21 Q. And then Rubenstein would have had the  
22 freedom to make variations as to individual  
23 newspapers or magazines as it saw fit?

24 A. That did not alter the fact pattern  
25 and what was being presented, yes.

1 Rosenthal

2 covered the story?

3 It says the following is a list of --

4 A. A hit means something appeared.

5 Q. In that particular media.

6 A. Correct.

7 Q. Okay. Did your staff people speak

8 with the media directly in this launch?

9 A. Yes.

10 Q. Do you know what they said to the

11 media people?

12 A. Some verbal variation of what you've

13 read in the pitch letters.

14 Q. Did you yourself speak to any media?

15 A. No.

16 Q. Would that not have been within your

17 normal duties and responsibilities?

18 A. That's not what I would have done on

19 this kind of a project.

20 Q. That would have been Mr. Cooper?

21 A. That would have been Mr. Cooper and

22 Ms. Lynn, and there may have been a media person

23 who assisted on the day of or the day before, but

24 there was no record that survived.

25 Q. Did Mr. Cooper or Ms. Lynn have any

1 Rosenthal

2 instructions, either from Rubenstein or the  
3 client, as to how to answer questions regarding  
4 the Cuban Cohiba?

5 A. We did not serve as the spokesman for  
6 the client. If the reporter had a question, they  
7 would one of two things; either put the reporter  
8 together with a representative of the client to  
9 do an interview, or call the client with a  
10 specific question, take down the answer and relay  
11 it.

12 Q. Do you know if that occurred here?

13 A. I don't.

14 Q. Mr. Cooper and Ms. Lynn might know  
15 that?

16 A. If they recall.

17 Q. I'm going to show you what came from  
18 your files, from Kathy Lynn to Gary Zarr, RA 0050  
19 to 52 and I first ask -- it's CC to E. Cooper.

20 The first question I have is, who is  
21 Gary Zarr?

22 A. Gary Zarr is a -- was an executive  
23 vice president with our firm for a number of  
24 years, who left the firm, oh, a year or  
25 year-and-a-half ago.

1 Rosenthal

2 Q. Was he involved in this project?

3 A. Not directly, but Gary Zarr was quite  
4 expert in doing for clients, large scale events  
5 that attracted a lot of publicity, and at a given  
6 point in time I probably suggested to Kathy and  
7 Evan to sit down with Gary and pick his brain.

8 Q. This contains a list of people they  
9 intend to send the pitch letter to.

10 If you could take a look, I think it  
11 starts on page 2, and tell me if you know  
12 whether -- you have any knowledge of whether  
13 those media outlets received the pitch letter we  
14 looked at, either in that form or a similar  
15 form.

16 A. I don't know. I can make assumptions,  
17 but I don't know.

18 Q. Would you have kept a copy of the  
19 letter sent to the media or just the one letter,  
20 the form letter?

21 A. Just the one letter. It would be  
22 typical to keep just one or two.

23 Q. Not to the 20 outlets or 30 outlets --

24 A. That's correct.

25 Q. -- you send it to?



1 Rosenthal

2 Am I correct that General Cigar --

3 MR. GOLDSTEIN: Let me mark this, I

4 guess 53.

5 (Plaintiff's Exhibit 53, Unidentified

6 document bearing Bates Nos. RA 0050 to 51,

7 marked for identification, as of this date.)

8 BY MR. GOLDSTEIN:

9 Q. I take it that --

10 MS. DORE: Do I have a copy?

11 MR. GOLDSTEIN: What's that?

12 MS. DORE: Do I have a copy?

13 MR. GOLDSTEIN: Right now you don't,

14 but it's RA 0050 to 51.

15 BY MR. GOLDSTEIN:

16 Q. I take it that General Cigar -- excuse  
17 me, Rubenstein Associates prepared press releases  
18 in addition to the pitch letters?

19 A. Yes.

20 Q. And the press releases came from  
21 Rubenstein as opposed to from General Cigar and  
22 they were released by Rubenstein?

23 A. Yes.

24 Q. Were those, the final ones that were  
25 released, were they approved by the client?

1 Rosenthal

2 A. That would be our normal practice.

3 Q. Do you recall if they were reviewed by  
4 the client?

5 A. No, I don't recall, but I would be  
6 shocked if they weren't.

7 Q. Do you know if they were reviewed by  
8 Mr. Wollen?

9 A. I don't know who at the client  
10 reviewed it.

11 MR. GOLDSTEIN: Why don't we mark  
12 this.

13 (Plaintiff's Exhibit 54, Draft press  
14 release, marked for identification, as of  
15 this date.)

16 BY MR. GOLDSTEIN:

17 Q. I'm showing you what's been marked as  
18 Plaintiff's Exhibit 54, and it's a draft press  
19 release.

20 Or let me ask you this: It says,  
21 "Draft for approval."

22 A. Yes.

23 Q. Is this a draft press release?

24 A. Yes, it is.

25 Q. Did you draft the press releases?

1 Rosenthal

2 what became the final press releases?

3 A. No.

4 Q. Do you know if Mr. Cooper did?

5 A. I don't have the knowledge. I'm  
6 assuming he did, yes.

7 Q. Or Ms. Lynn?

8 A. It would have been more likely  
9 Mr. Cooper.

10 Q. More likely Mr. Cooper?

11 A. Yes.

12 Q. Because of his role as the primary  
13 contact with the client?

14 A. Because of his -- yes, and since he  
15 did most of the drafting.

16 MR. GOLDSTEIN: Why don't we mark  
17 this.

18 (Plaintiff's Exhibit 55, Final press  
19 release dated 9-25-97, marked for  
20 identification, as of this date.)

21 BY MR. GOLDSTEIN:

22 Q. I'm showing you what's been marked as  
23 Plaintiff's Exhibit 55. It's from Rubenstein  
24 Associates for release at 6:00 p.m. Eastern,  
25 Thursday, September 25, 1997.

1 Rosenthal

2 Do you know if this is the final press  
3 release that was released?

4 A. It seems to be.

5 Q. And this would have been approved by  
6 the client --

7 A. Yes.

8 Q. -- to the best of your knowledge?

9 A. That's correct.

10 Q. And this would have been prepared by  
11 Mr. Cooper or Ms. Lynn or together?

12 A. Yes. We would have done the original  
13 drafting, subject to client input, comment and  
14 approval, yes.

15 Q. If you look on the third page, there's  
16 a document about Cohiba.

17 A. Yes.

18 Q. Do you know who prepared that  
19 document?

20 A. I don't.

21 Q. Do you know if it was prepared by  
22 Rubenstein or prepared by the client?

23 A. I'm assuming it was prepared by  
24 Rubenstein.

25 Q. You're assuming it was prepared?

1 Rosenthal

2 A. Yes.

3 Q. Do you recall reviewing this or  
4 earlier versions of this?

5 A. I recall seeing this at the time of  
6 the launch.

7 Q. Under the cigar's history, the first  
8 sentence, "Cohiba cigars initially were made in  
9 Cuba in 1966 for Fidel Castro's personal  
10 consumption and to be given away as diplomatic  
11 gifts."

12 Do you know why that's in there?

13 A. As the subhead states, to relate the  
14 cigar's history.

15 Q. What does the Cohiba cigar made in  
16 Cuba have to do with the cigar's history?

17 A. Well, first, apparently the first time  
18 the name was used on the cigar was in 1966 in  
19 Cuba, so that would be the, at least the origin  
20 of the name.

21 Q. Do you recall any discussion about  
22 putting in that first sentence?

23 A. No.

24 Q. Do you recall any discussion as to why  
25 the Cuban Cohiba has anything to do with the

1 Rosenthal

2 no work we did on their website.

3 Q. Do you have any knowledge of whether  
4 you prepared this document and then they put it  
5 up on their website after you prepared it?

6 A. No.

7 Q. You don't know one way or the other  
8 whether --

9 A. I don't know one way or the other for  
10 certain.

11 Q. Okay. And this document about Cohiba  
12 was made available to the general public?

13 A. This document was an attachment to the  
14 press release that was made available to  
15 reporters.

16 Q. Okay. And when you say "to  
17 reporters," how broad was the release?

18 A. To the best of my recollection, fairly  
19 broad.

20 Q. What would be that; 50 outlets, 1,000  
21 outlets?

22 A. Somewhat more than 50, but far under  
23 1,000.

24 Q. A couple of hundred?

25 A. Probably.

1 Rosenthal  
2 Cooper and attached draft confidential  
3 letter from Cullman to General Cigar, marked  
4 for identification, as of this date.)

5 (Plaintiff's Exhibit 58, Fax cover  
6 sheet dated 5-23-97 from Cullman to  
7 Rubenstein with attachments, marked for  
8 identification, as of this date.)

9 (Time noted: 2:10 p.m.)

10

11

12

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14

15



PETER ROSENTHAL

16 Subscribed and sworn to before me

17 this ~~17<sup>th</sup>~~ day of July, 2000.

18

19

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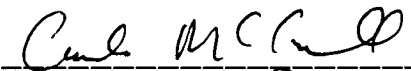
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Notary Public

CAMBRIA M. McCONNELL  
Notary Public, State of New York  
No. 01MC6006473  
Qualified in New York County  
Commission Expires May 4, 2002

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, ANNETTE ARLEQUIN, a Certified  
Shorthand Reporter and Notary Public within  
and for the State of New York, do hereby  
certify:

That PETER ROSENTHAL, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the testimony  
given by the witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 6th day of June, 2000.



ANNETTE ARLEQUIN, CSR, RPR



1

2

## ----- I N D E X -----

3

WITNESS EXAMINATION BY PAGE

4

PETER ROSENTHAL MR. GOLDSTEIN 5

5

## ----- EXHIBITS -----

6

PLAINTIFF'S FOR ID.

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attached draft confidential letter from  
Cullman to General Cigar 95

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Plaintiff's Exhibit 58, Fax cover sheet  
dated 5-23-97 from Cullman to Rubenstein  
with attachments 96

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

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EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
-----		X

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition  
Transcript of Lewis Rothman, dated October 31, 2000**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVue Nos. 138, 136, 135, 132, 91 and 89.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EMPRESA CUBANA DEL TABACCO,  
d.b.a. CUBATABACO,

Plaintiff,

vs.

CULBRO CORPORATION, and  
GENERAL CIGAR CO., INC.,

Defendants.

No. 97 Civ. 8399  
(RWS)

**ORIGINAL**

DEPOSITION OF LEWIS ROTHMAN

Whippany, New Jersey

Tuesday, October 31, 2000

Reported by:  
FRANCIS X. FREDERICK, C.S.R.  
JOB NO. 114619

  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EMPRESA CUBANA DEL TABACCO, )  
d.b.a. CUBATABACO, )

Plaintiff, )

vs. )

CULBRO CORPORATION, and )  
GENERAL CIGAR CO., INC., )

Defendants. )  
-----)

No. 97 Civ. 8399  
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4

October 31, 2000

5

10:05 a.m.

6

7

Deposition of LEWIS ROTHMAN, held at the

8

offices of JR Tobacco, Inc., 301 Route 10

9

East, Whippany, New Jersey, pursuant to

10

Notice and Subpoena, before Francis X.

11

Frederick, a Notary Public of the State of

12

New Jersey.

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A P P E A R A N C E S:

RABINOWITZ, BOUDIN, STANDARD,

KRINSKY & LIEBERMAN, P.C.

Attorneys for Plaintiff, Empresa Cubana del

Tabacco d.b.a. Cubatabaco

740 Broadway, 5th Floor

New York, New York 10003

BY: MICHAEL KRINSKY, ESQ.

MORGAN & FINNEGAN, L.L.P.

Attorneys for Defendants, Culbro

Corporation and General Cigar Co., Inc.

345 Park Avenue

New York, New York 10154

BY: SCOTT GREENBERG, ESQ.

800 JR CIGAR, INC.

Attorneys for the Witness

301 Route 10 East

Whippany, New Jersey 07981

BY: MICHAEL COLLETON, ESQ.

1

2 L E W I S R O T H M A N, called as a witness,

3 having been duly sworn by a Notary Public,

4 was examined and testified as follows:

5 EXAMINATION BY

6 MR. KRINSKY:

7 Q. Mr. Rothman, could you state your full

8 name and address for the record.

9 A. It's Lewis, L-E-W-I-S, Rothman,

10 R-O-T-H-M-A-N. My home address is 20 Normandy

11 Parkway, Morristown, New Jersey, 07960.

12 Q. And what is your principal business

13 address?

14 A. It would be -- what is it? -- 32-89 Oak

15 Lane? Or 38-29?

16 MR. COLLETON: Yours is 301 Route 10

17 East, Whippany.

18 A. Okay. 301 Route 10 East, Whippany, New

19 Jersey.

20 Q. Thank you. My name is Michael Krinsky

21 with the firm Rabinowitz, Boudin, Standard, Krinsky

22 &amp; Lieberman. We represent the plaintiff,

23 Cubatabaco, in this action.

24 I'll be asking you a series of

25 questions. If any of the questions are not clear,



1 Rothman

2 please indicate that and I'll try to clarify them.

3 If at any time you would like to take a break, let

4 us know and we'll accommodate you, of course.

5 MR. KRINSKY: Let's mark --

6 THE WITNESS: What is the nature of

7 the action?

8 MR. KRINSKY: Well, I think we could

9 talk about that off the record. But on the

10 record we should just --

11 THE WITNESS: Okay.

12 MR. KRINSKY: -- have it be my

13 questions to you.

14 Let's mark -- I should -- this is

15 pursuant to subpoena and I want to mark the

16 deposition and notice -- deposition notice

17 and subpoena as Plaintiff's Exhibit 193

18 and the -- which was directed to Mr. Rothman

19 and the second deposition subpoena which was

20 issued pursuant to Rule 30(b)(6) on JR

21 Tobacco of America. We'll mark that as

22 Plaintiff's Exhibit 194.

23 (Plaintiff's Exhibit 193, Deposition

24 Notice and Subpoena, marked for

25 identification as of this date.)

1 Rothman

2 (Plaintiff's Exhibit 194, (30)(b)(6)

3 Notice, marked for identification as of this

4 date.)

5 BY MR. KRINSKY:

6 Q. I'd like the witness to examine  
7 Plaintiff's Exhibit 193 and 194 including the  
8 attachments thereto which are subpoenas and ask  
9 whether he has seen those documents before.

10 A. I've seen them but not read them.

11 Q. Okay. And in connection with these  
12 subpoenas were you represented by a Mr. Elliott  
13 Scheer?

14 A. Yes.

15 Q. And he's your attorney, correct?

16 A. Yes.

17 Q. And he advised you you would be  
18 appearing pursuant to those subpoenas, is that  
19 correct?

20 A. Actually, he advised Michael of the date  
21 and Mr. Colleton then advised me.

22 Q. Okay. Fine. And Mr. Michael -- is  
23 it Colleton?

24 MR. COLLETON: Colleton,

25 C-O-L-L-E-T-O-N.

1 Rothman

2 BY MR. KRINSKY:

3 Q. And Mr. Colleton is your in-house  
4 counsel, is that correct?

5 A. Yes.

6 Q. Okay. And in response to these  
7 subpoenas did you search for any documents?

8 A. There aren't any. There was nothing to  
9 search for.

10 Q. There were no documents with respect to  
11 the subject matter specified in the duces tecum  
12 part of the subpoena, is that right?

13 A. The what?

14 Q. The part of the subpoena that requires  
15 the production of documents.

16 A. Yeah. There are no documents.

17 Q. Did you make a search for that or did  
18 you -- did you make a search for documents and find  
19 there were no documents?

20 A. Michael asked me if there were documents  
21 relating to it and I said there weren't.

22 Q. Um-hum. So you made no -- did you make  
23 any efforts to verify that or you were certain of  
24 that? Fairly certain of that?

25 A. Well, other -- you're talking about

1 Rothman

2 A. I was brought in as an expert witness on  
3 cigars, on the part of the watchmaker.

4 Q. And you testified at deposition.

5 A. Yes.

6 Q. And did you testify at trial in that  
7 case?

8 A. No.

9 Q. The Davidoff case you mentioned  
10 previously, is that the action in the Federal Court  
11 in New York captioned JR Tobacco of America, Inc.  
12 versus Davidoff of Geneva?

13 A. Yes.

14 Q. And have you testified at trial in any  
15 action?

16 A. No.

17 Q. Now, are you the officer or director of  
18 any companies engaged in the cigar industry?

19 A. Yes.

20 Q. And could you please identify the  
21 companies and your position?

22 A. Well, I'm the president and CEO of 800  
23 JR Cigar which then has a number of holding  
24 companies -- it's the holding company which has a  
25 number of other entities involved in selling

1 Rothman

2 cigars.

3 Q. Um-hum. And what are those entities --  
4 could you identify those entities, please?

5 A. Okay. There would be JRN Grocery  
6 Corporation.

7 (Conference between counsel and  
8 witness.)

9 A. Why don't we provide you a list of the  
10 companies.

11 Q. That would save time.

12 A. Yeah.

13 (Pause on the record.)

14 Q. I've been handed a document by Mr.  
15 Rothman's counsel -- and let's mark it Plaintiff's  
16 Exhibit 195, please.

17 (Plaintiff's Exhibit 195, company  
18 list, marked for identification as of this  
19 date.)

20 BY MR. KRINSKY:

21 Q. I'd ask Mr. Rothman to take a look at  
22 it, to -- do you want to switch here? You take the  
23 exhibit and I'll -- that's all right with you?

24 A. Yeah.

25 Q. Exhibit 195. And can you identify what

1 Rothman

2 that is?

3 A. This appears to be a list of the various  
4 different companies that are all held by 800 JR  
5 Cigar.

6 Q. Okay. And each of these companies are  
7 engaged in some fashion in the cigar business, is  
8 that correct?

9 A. With the exception of Casablanca which  
10 is a record store.

11 Q. I see. Okay. Thank you.

12 Now, looking to the first company, JR  
13 Tobacco of America, what sort of business is it  
14 involved in?

15 A. It sells cigars by mail and it's also a  
16 licensed distributor of cigarettes in the State of  
17 North Carolina.

18 Q. And in what fashion does it  
19 distribute -- sell cigars? Through what means?

20 A. Either by mail or in person.

21 Q. Does it have a retail store?

22 A. Yes. Not a retail store. It has a --  
23 yeah -- no, no. It doesn't have a retail store.  
24 I'm sorry. So forget about the part in person.  
25 It's just mail order.

1 Rothman

2 Q. And when was it established,  
3 approximately?

4 A. I don't know.

5 Q. Do you know what decade?

6 A. No. Well, yeah. I would say it was  
7 established in June of -- July of 1999.

8 Q. And when did it become a subsidiary of  
9 800 JR Cigars?

10 A. Of 800 JR Cigar? Either at the time or  
11 shortly before we became a public company.

12 Q. When was that?

13 A. That was June of '97.

14 THE WITNESS: Is that right?

15 MR. COLLETON: Correct.

16 Q. Is 800 JR Cigar still a public  
17 company?

18 A. No.

19 Q. And when did it cease being a public  
20 company?

21 A. About a month ago.

22 THE WITNESS: Can I go off the record?

23 (Discussion held off the record.)

24

25 BY MR. KRINSKY:

1 Rothman

2 Q. And has JR Tobacco of America always  
3 been located in North Carolina?

4 A. Yes.

5 Q. The next company, Santa Clara, Inc.,  
6 what business is it engaged in?

7 A. The wholesale distribution of cigars.

8 Q. And how long has it been engaged in that  
9 business?

10 A. Same exact date.

11 Q. And has it always been located in North  
12 Carolina?

13 A. Yes.

14 Q. The next company, JR Cigars.com, Inc.

15 A. That sells cigars by e-mail, by  
16 electronic commerce.

17 Q. And when was it established?

18 THE WITNESS: Is that last April?

19 MR. COLLETON: Yes.

20 A. April 1999.

21 THE WITNESS: Is that the correct  
22 address for it or is that North Carolina?

23 MR. COLLETON: For our purposes it's  
24 correct.

25 THE WITNESS: Okay.



1 Rothman

2 BY MR. KRINSKY:

3 Q. And J&R Grocery Corp., what is its  
4 business?

5 A. It's a retail cigar store and it also  
6 has an associated lounge.

7 Q. A cigar lounge?

8 A. Well, it's food, alcohol. No, it's not  
9 a cigar lounge. Well, I mean, if you smoke a cigar  
10 in there you could call it a cigar lounge.

11 Q. And it's located at One Wall Street  
12 Court, is that correct?

13 A. That's correct.

14 Q. And how long has it been in business?

15 A. I'm not sure of the exact date, but  
16 sometime prior to 1970.

17 Q. And have you been --

18 A. You mean at this address?

19 Q. No. Regardless of the address, how long  
20 has J&R Grocery Corp. been in business?

21 A. That would be since before 1970.

22 Q. And were you personally involved in that  
23 company since its founding?

24 A. No. But I would say I was involved in  
25 it since 1970.

1 Rothman

2 Q. And --

3 A. It probably preceded me by a year or  
4 two.

5 Q. And what was your first involvement with  
6 that company?

7 A. That would be in 1970 when I started  
8 working there.

9 Q. Um-hum. And was this -- was any member  
10 of your -- any other member of your family involved  
11 in that company?

12 A. Yeah. My father and mother owned the  
13 store. But at that time it was a grocery store.  
14 Which accounts for the name.

15 Q. And where was the store first located?

16 A. 713 8th Avenue.

17 Q. And what's the approximate cross street  
18 there?

19 A. 45th Street.

20 Q. Hum?

21 A. 45th Street. 45th and 8th.

22 Q. And that's in Manhattan.

23 A. Yeah.

24 Q. And was it first -- when it first was  
25 established, did it sell cigars?

1 Rothman

2 A. Yes.

3 Q. And it sold groceries as well.

4 A. Right.

5 Q. Which --

6 A. I would say it sold groceries and it  
7 sold cigars as well.

8 Q. It's principal initial business was  
9 groceries.

10 A. Right.

11 Q. And also cigars.

12 And in the 1970s did it have any stores  
13 other than 8th Avenue and 45th Street?

14 A. In the 1970s. Yes. About 19 -- I'm  
15 just ball parking this, I don't know. Maybe '75,  
16 '76, '77, we opened up a second store which was at  
17 219 Broadway in Manhattan.

18 Q. And was that -- is that store  
19 principally groceries with --

20 A. No, that was a cigar store.

21 Q. That was entirely a cigar store.

22 A. Yeah.

23 Q. Were there any other stores besides --  
24 when you opened -- when it opened that second store  
25 did it continue to operate the first store?

1 Rothman

2 A. Yes.

3 Q. And did it add any other stores after  
4 that? J&R Grocery?

5 A. No.

6 Q. And during the 1980s did it have any  
7 other stores?

8 A. No. It never had any other stores. In  
9 fact, it subtracted one because one of the -- the  
10 original store, which was on 8th Avenue, moved to  
11 1161 6th Avenue at which time we changed the name  
12 to something else but I don't recall what it was.

13 Q. And when it changed location, did it  
14 continue to be both a grocery and a cigar store?

15 A. No. It became just a cigar store.

16 Q. And when was this? Approximately.

17 A. I would say that that was 1980.

18 Q. And during the 1980s it maintained both  
19 the store at 219 Broadway and the store on 6th  
20 Avenue?

21 A. It depends on who the "it" is.

22 Q. J&R Grocery?

23 A. Well, no. It was two separate  
24 companies. One was called J&R Grocery. That would  
25 be the store at 219 Broadway. And the store at

1 Rothman

2 45th Street and 6th Avenue I believe was called  
3 Rothman Brothers.

4 Q. And do these two stores still exist?

5 A. No. I mean, the -- from time to time we  
6 end up moving to other places.

7 Q. In the 1980s did J&R Grocery have any  
8 store other than 219 Broadway?

9 A. No.

10 Q. How about in the 1990s?

11 A. No.

12 Q. Does it still have the store at 219  
13 Broadway?

14 A. No. It is now located at One Wall  
15 Street Court.

16 Q. Besides J&R Grocery -- I'm sorry.

17 How long did your father remain in the  
18 cigar business?

19 A. About a year.

20 Q. And when was that? What year was that?

21 A. 1981.

22 No, that's wrong. 1971. God, time  
23 flies.

24 Q. So your father at that point left the  
25 cigar business?

1 Rothman

2 A. Yeah. He was ill.

3 Q. And did you take over the family  
4 business?

5 A. Yes.

6 Q. The next store is -- were there other  
7 stores -- I'm sorry.

8 At previous times were there other  
9 companies with which you've been associated which  
10 also had the name Santa Clara in it? Santa Clara  
11 Cigars?

12 A. No. There was a factory named San  
13 Andreas Tuxtla which is in the State of Vera Cruz,  
14 in Mexico. And I began to import cigars from there  
15 which we called Santa Clara. And so when we formed  
16 our wholesale company, Santa Clara, that's the name  
17 we gave it.

18 Q. And when was that wholesale company  
19 formed?

20 A. About 1977. But that's not the same --  
21 I mean, a lot of these companies, you know, have --  
22 that company was previously called Cigars by Santa  
23 Clara. Many of these companies have changed names  
24 over the years as one business was discontinued and  
25 another was started in another state and then that

1 Rothman

2 one was discontinued so...

3 Q. When was the -- you say it was  
4 previously called Cigars by Santa Clara. Was that  
5 a wholesale company as well?

6 A. Yes. The function was the same.

7 Q. And where was -- when was Cigars by  
8 Santa Clara established?

9 A. I believe in 1977. '76, '77. Right in  
10 that time.

11 Q. And where was it located?

12 A. It was located at 108 West 45th Street.

13 Q. Was that the same location where Rothman  
14 Brothers was located?

15 A. Yes. What happened is one lease  
16 expired, then another store became available  
17 diagonally across the street.

18 THE WITNESS: Could we go off the  
19 record for a second.

20 (Discussion held off the record.)

21 BY MR. KRINSKY:

22 Q. JR -- going back to the list on Exhibit  
23 195, JR -- the company JR Tobacco, Inc. in North  
24 Carolina, and what's its business?

25 A. It's a discount outlet store.

1 Rothman

2 Q. And how long has it existed?

3 A. July 1999.

4 Q. J&R -- the next company, J&R Tobacco,  
5 New Jersey Corp., and what is its business?

6 A. It's a retail tobacco shop.

7 Q. And it's located in New Jersey?

8 A. Yeah. Paramus, New Jersey.

9 Q. And how long has it been in existence?  
10 Approximately.

11 A. Mid 1980s.

12 Q. And MC Management, Inc. is a management  
13 company, is that correct?

14 A. Actually this shouldn't be on the list  
15 should it? It's not owned by 800 JR Cigar.

16 THE WITNESS: You're right. It's 800's  
17 management company.

18 THE WITNESS: So it doesn't belong on  
19 this list because we don't own it.

20 MR. COLLETON: Right.

21 A. Scratch off MC Management.

22 Q. JR Tobacco of Michigan is what?

23 A. Retail tobacco shop in existence since  
24 approximately 1984, '85.

25 Q. JR 46th Street, Inc.



1 Rothman

2 A. It's a retail tobacco shop which was --  
3 that's the one that started off as JR -- as J&R  
4 Grocery. Then it became Rothman Brothers. And now  
5 it's JR -- whatever it is. JR 46th Street.

6 Q. And the entrance of that store is on  
7 Fifth Avenue.

8 A. That's correct.

9 Q. Is that -- withdraw that.  
10 JR Tobacco Outlet in Whippany, New  
11 Jersey is what sort of business?

12 A. A retail tobacco shop and it's in  
13 existence since early 1996.

14 Q. And JR Statesville, Inc.?

15 A. That's a discount outlet center and it's  
16 been existence since November of '93.

17 Q. JR Cigars of D.C.?

18 A. It's a retail tobacco shop and I guess  
19 it's been in existence about two years.

20 Q. JR Tobacco Burlington?

21 A. That's a discount outlet center and it  
22 has been in existence I think since November of  
23 '97. Is that about right? Burlington? November  
24 of '97.

25 Q. Okay. And the remaining companies on

1 Rothman

2 the list are holding companies, is that correct?

3 A. Um-hum. Right.

4 Q. Okay. Are there any other retail stores  
5 with which you are associated that are not on this  
6 list?

7 A. No.

8 Q. Are there any wholesale businesses with  
9 which you are associated that are not on this list?

10 A. No.

11 Q. Any mail order companies with which you  
12 are associated --

13 A. No.

14 Q. -- that are not on this list?

15 No. The answer is no to that question?

16 A. No.

17 Q. Okay.

18 Of the current retail stores on this  
19 list, which store has the -- normally has the  
20 highest volume?

21 A. Of sales?

22 Q. Yeah.

23 A. The one in Selma, North Carolina.

24 Q. The one in Selma is a discount, is that  
25 correct?

1 Rothman

2 mentioned privately-held companies?

3 A. Prior to our public offering?

4 Q. Yes.

5 A. Yes.

6 Q. And who were the principal owners of  
7 those companies?

8 A. Myself and my wife, LaVonda.

9 Q. And in these companies what position did  
10 you occupy as an officer or director?

11 A. President.

12 Q. And that's true of all the companies?

13 A. Yes.

14 Q. Now, when did you first enter the cigar  
15 business?

16 A. As a full-time worker you mean?

17 Q. All right. Let's start there.

18 A. 1970.

19 Q. And you've been engaged in that business  
20 ever since?

21 A. Yes.

22 Q. And when you first entered in 1970, in  
23 what way did you enter that business?

24 A. I took over my father's grocery store  
25 which sold cigars.

1 Rothman

2 the business, it was more of their cigars as well.

3 Q. And during the '70s what brands of  
4 theirs did you carry?

5 A. The same ones I mentioned with the  
6 addition -- with the addition of Partagas which  
7 came out later than the previous ones I mentioned.

8 Q. And in the 1980s did you continue to  
9 have contact with --

10 A. Well, I should back up here.

11 Q. Yeah.

12 A. Since your lawsuit was all about Cohiba,  
13 we were receiving three brands from them  
14 periodically for trademark purposes; one being  
15 Cohiba, one was the C Fuentes, and the other one  
16 was -- what the hell was -- I forget the third one.

17 Q. And when you say for trademark purposes,  
18 what do you mean?

19 A. Well, I assume it was for trademark  
20 purposes because I also got in many boxes from them  
21 that had various parts of other -- for instance, if  
22 they were selling Tiparillos, we would get in a  
23 certain number of cigars called Tip and then  
24 another thing called Arillo, and then if it was  
25 White Owl we would get cigars named Owl. Or

1 Rothman

2 different parts of names of cigars.

3 Q. And why did you conclude that you were  
4 receiving three brands -- you were receiving these  
5 brands periodically for trademark purposes?

6 A. I assumed somebody -- yeah, somebody  
7 from General, and I don't remember who it was, told  
8 me that we'd be getting these things periodically.

9 Q. I'm sorry. I didn't hear you.

10 A. Somebody at General told me that I'd be  
11 getting these things periodically and I guess there  
12 was a certain -- I'm not positive of this, but that  
13 there were a certain number of cigars that had to  
14 be sold in interstate traffic in order to --  
15 whatever the legal purposes, to keep the names or  
16 protect the names or whatever.

17 Q. And do you remember the number of cigars  
18 that you were told had to be sold?

19 A. Not offhand, no.

20 Q. Did you request these three brands or  
21 did they --

22 A. No, no. I had never heard of any of  
23 these brands. Most of them were only parts of  
24 names. They weren't actual brands.

25 Q. And where were these cigars sent? To

1 Rothman

2 which store?

3 A. 108 West 45th Street.

4 Q. Forgive me. At that time which company  
5 was located at that address?

6 A. It would have been Rothman Brothers.

7 Q. And for what period of time did this  
8 continue?

9 A. I don't recall. It was a number of  
10 years. Two years, three years.

11 Q. And what did -- did you pay for these  
12 cigars?

13 A. Yeah. We got invoiced for them.

14 Q. Did you pay the invoice?

15 A. Yeah, sure.

16 Q. And were these cigars -- was the price  
17 you paid General Cigar for these cigars the normal  
18 price you would pay for cigars of that quality?  
19 That were not being sold for -- not being sent --

20 A. Yeah. They were not cigars I really  
21 would have bought.

22 Q. What did do you with these cigars once  
23 you got them?

24 A. Well, we just sold them in the store.

25 Q. Excuse me?

1 Rothman

2 A. We'd just sell them in the store.

3 Q. You would put them on the shelf  
4 somewhere?

5 A. Yeah. We would just put them out on the  
6 floor with a price on them, you know, whatever.

7 Q. Did you give them any prominence in  
8 display within the store?

9 A. Well, no. Because there was no  
10 continuity with the items. They just appeared from  
11 time to time out of the blue.

12 Q. Have you written about cigars for  
13 publication?

14 A. I'm sorry. Have I what?

15 Q. Have you ever written about cigars for  
16 publication?

17 A. Oh, yes. Sure.

18 Q. Putting aside catalogs and other  
19 commercial material. Did you ever write a book  
20 about cigars?

21 A. Yes, I did.

22 Q. What's the name of that book?

23 A. The Cigar Almanac.

24 Q. And when was that published?

25 A. 1979. And another in 1989.

1 Rothman

2 cigars at the time.

3 Q. Between the time '79 and '89, your next  
4 book, were there other books in print for the  
5 consumer about cigars?

6 A. I don't believe so. This was more or  
7 less a dead industry until about 1992.

8 Q. And what happened in 1992?

9 A. A miracle occurred.

10 Q. What was the miracle?

11 A. I don't know. Everybody started to want  
12 cigars for some unknown reason.

13 Q. Do you have any opinions as to why  
14 people wanted to have cigars suddenly?

15 A. Yes. I believe that the industry had  
16 declined to such a point that the number of  
17 products and the points of distribution had become  
18 so scarce that the industry had hit bottom, so to  
19 speak. And so the level of cigar manufacturing was  
20 also at a very low point which meant that the level  
21 of raw materials and trained labor to make cigars  
22 was at its lowest ebb ever.

23 And then Cigar Aficionado came out and  
24 also about 1992, we started on this, you know,  
25 tremendous bull market. And I think Americans like



1 Rothman

2 to do things that are unpopular, and since cigar  
3 smoking had been relegated mostly to multiple  
4 tattooed truck drivers by that time, that people  
5 started to take a fascination with cigars. And so  
6 we had a little bit of a spurt in sales which  
7 encouraged additional retailers to enter the  
8 picture who had not been selling cigars before.

9 And since production levels were so low,  
10 the pipeline of any new number of stores in America  
11 would cause essentially what was a fake shortage.  
12 And as soon as Americans know that something is  
13 short, then they want more of it.

14 And as soon as they -- an uneducated, so  
15 to speak, retailer realizes that there's an  
16 opportunity to sell something that's hot, they jump  
17 into it. You know, like flavored popcorn or those  
18 tubes of candy that appeared in all the shopping  
19 malls. And those type of stores come and go.

20 But in the cigar business, because you  
21 can't turn out cigars like you can candy or jelly  
22 beans, it created a shortage which further excited  
23 people and you had a boom in distribution.

24 I don't think the boom in actual  
25 consumption was anywhere near the boom in

1 Rothman

2 distribution.

3 So I don't know remember what the

4 question was but --

5 Q. It was an interesting answer.

6 A. Yeah.

7 Q. What was the role of Cigar Aficionado in  
8 this process?

9 A. Well, the role was that somebody who  
10 actually had experience in putting out a magazine  
11 to wine enthusiasts, which is not to be confused  
12 with Wine Enthusiast magazine, had an interest in  
13 cigars and put a very classy publication on a  
14 product that nobody in their right mind would have  
15 made a magazine on or thought that they would be  
16 successful at. And, lo and behold, they were  
17 successful at it.

18 Of course, this spurred a bunch of  
19 imitators to make other cigar magazines which there  
20 was a small enough market for the existing one.

21 So it had its period of peak and supply  
22 as well.

23 Q. And what impact did it have upon what  
24 you disclosed as this miracle that occurred?

25 A. Well, the impact that it had is that in

1 Rothman

2 previous years only a company like General Cigar or  
3 Consolidated Cigar had the manpower to go out on  
4 the street and put into distribution a brand of  
5 cigars. Since there was no literature available  
6 about cigars, unless they saw the cigar being  
7 displaced in the cigar store, the consumer would  
8 not know about the cigar.

9 Now, all of a sudden, here comes a piece  
10 of literature that's being distributed eventually  
11 to hundreds of thousands of homes and people are  
12 seeing the names of cigars that are not distributed  
13 by General or Consolidated and asking retailers for  
14 these hitherto unknown cigars.

15 And then they started to find out where  
16 they could buy these off-the-wall cigars, so to  
17 speak, and then the factories that were making  
18 these very obscure brands starting receiving bigger  
19 orders. So they started buying the tobacco that  
20 would have gone to the major cigar manufacturers,  
21 further enhancing the shortage because now they  
22 were invading the materials.

23 And then they started to invade their  
24 display space as well.

25 So it was a rolling stone. Except in

1 Rothman

2 this case it gathered moss.

3 Q. Did any of the companies with which you  
4 were associated advertise in Cigar Aficionado?

5 A. Yes. They all -- with which I was  
6 associated?

7 Q. Excuse me?

8 A. You said with which I was -- you mean  
9 which -- did any of our vendors --

10 Q. No. I'm sorry. Any of the companies in  
11 which you were an officer or director or principal  
12 advertise in Cigar Aficionado?

13 A. Yeah. We did a few ads until I came to  
14 my senses.

15 Q. And when were those ads there?

16 A. Probably 1993 or so.

17 Q. Um-hum. And which companies?

18 A. That would be Cigars by Santa Clara, the  
19 wholesale company.

20 Q. And during that time, did you -- did any  
21 of your companies advertise in any other  
22 publication?

23 A. There was no other publication.

24 Q. Do you have a copy of the two books you  
25 wrote here in your office?

1 Rothman

2 when the Cuban embargo ends. If and when it does.

3 Q. Did you ever have any -- in your  
4 conversations with people from General Cigar over  
5 all the years, was there any reference to the Cuban  
6 Cohiba?

7 A. Only in terms of trade dress.

8 Q. Um-hum. And when was that?

9 A. I think it started probably about 1994  
10 or so. And there were various different people  
11 putting out hats and all sorts of clothing and a  
12 lot of miscellaneous accessories and in some  
13 instances cigars with the name Cohiba on it.

14 Q. And what was the discussion you had with  
15 General Cigars about that subject?

16 A. That they were making their best effort  
17 to halt these things.

18 Q. And did the hats and the miscellaneous  
19 accessories that you mentioned have the name Cohiba  
20 on it?

21 A. Yes.

22 Q. And did it have any reference to the  
23 Havana Cohiba?

24 A. Yes.

25 Q. And these materials to your eye were

1 Rothman

2 referring to the Cuban Cohiba?

3 A. Yes. It was their trade dress.

4 Q. Did you raise this subject with General  
5 Cigars?

6 A. Yeah.

7 Q. And why was that?

8 A. Excuse me?

9 Q. And why was that? Why did you raise it  
10 with them?

11 A. Why did I raise it? Because there were  
12 Cohibas other than the Cohibas that General Cigar  
13 sells being sold and, of course, all this other  
14 merchandise. And while I'm not an expert on  
15 trademarks, it seemed to me that, you know, it was  
16 so widespread that, you know, something should be  
17 done.

18 I also raised the same questions, by the  
19 way, you know, with Consolidated Cigar because  
20 there's an outfit called Monte Cristi de Tobacos in  
21 the Dominican Republic which has been making both  
22 Cohiba and Monte Cristi cigars, and God knows what  
23 else, and getting them into the United States  
24 successfully.

25 Q. The cigars that you talked about as

1 Rothman

2 distinct from the hats and accessories, did the  
3 cigars have the Cuban trade dress for Cohiba?

4 A. Yes, they did. Except they say some  
5 place on them Dominican Republic. Or at least they  
6 did after a time. I think at the beginning and I  
7 don't know if they said that at all. But I don't  
8 know.

9 Q. Did any consumer ever speak to anyone in  
10 your company about these cigars that you referred  
11 to and ask about where they came from?

12 A. Are you talking about the cigars from  
13 Monte Cristi de Tobacos?

14 Q. Yeah.

15 A. I don't know for sure. I mean, I have  
16 had people approach me with them. What they  
17 approached other people about, I don't know.

18 Q. What did they approach you about?

19 A. People would ask me if they were  
20 counterfeit or not. And, you know, I would look at  
21 the cigars and, you know, a lot of them were  
22 obviously made with tobacco that I identify as  
23 being Ecuador Connecticut, so, yeah, from ten feet  
24 away I would tell them it's not a Cuban cigar  
25 because it's the wrong wrapper on the cigar.

1 Rothman

2 Q. And when you say counterfeit what do you  
3 mean by that?

4 A. I think there's a tremendous amount of  
5 counterfeit Cuban cigars in the American  
6 marketplace, specifically Cohiba and Monte Cristi.

7 Q. When you say counterfeit you mean a  
8 cigar which --

9 A. That has the total same trade dress as  
10 the cigars coming from Cuba.

11 Q. And did this --

12 A. It's been going on for the last five,  
13 six years.

14 Q. Do you mean by counterfeit that the  
15 cigar by its name and trade dress means to convey  
16 that it is a Cuban cigar but in reality is not a  
17 Cuban cigar?

18 A. Absolutely.

19 The cigars from Monte Cristi de Tobacos,  
20 for the most part, as far as I know, did not  
21 portray themselves as being Cuban cigars; however,  
22 since it was the identical trade dress, it looks  
23 like it, and, you know, most consumers are not  
24 supposed to be experts on counterfeiting.

25 And, in fact, Cigar Aficionado ran an



1 Rothman

2 entire story on Cohiba counterfeits in one of their  
3 issues and they made the mistake and identified the  
4 counterfeit as the real one and the real one as the  
5 counterfeit which further exacerbated the problem.

6 Q. The real one being -- you mean a Cuban  
7 Cohiba?

8 A. Yes.

9 Q. Have you had any contact with Edgar  
10 Cullman, Sr. over the years?

11 A. Sure.

12 Q. And when did your contact with him  
13 start? Approximately.

14 A. Twenty years ago.

15 Q. With a Mr. Ross Wollen?

16 A. I've only met Ross in person but I've  
17 talked to him on the phone a number of times.

18 Q. And what was the subject -- and over  
19 what period of time have you talked to him over the  
20 phone? Approximately.

21 A. I don't recall.

22 Q. Did it begin ten years ago, 20 years  
23 ago, five years ago?

24 A. I don't recall the first time I had an  
25 occasion to talk to him. But five, six, seven

1 Rothman

2 actual knowledge."

3 A. I don't see that paragraph.

4 Q. I'm sorry. I meant the first page after  
5 the cover.

6 A. Oh, okay.

7 Q. Yeah, I'm sorry.

8 In 1994 did you believe that your  
9 companies were the largest cigar dealer in the  
10 world?

11 A. Yes.

12 Q. And what was the basis for that belief?

13 A. Well, I dealt with the largest cigar  
14 manufacturers and they all told me I was their  
15 largest account. And if I was the largest account  
16 of each and every one of the largest cigar  
17 manufacturers, you know, by deduction I would be  
18 obviously the largest cigar dealer.

19 Q. And which manufacturers are you  
20 referring to?

21 A. I was referring to those manufacturers  
22 who could sell legal product in the United States.

23 Q. Um-hum. And which companies?

24 A. General Cigar, Consolidated Cigar,  
25 Swisher, Villazon, et cetera.

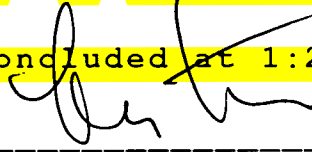
1 Rothman

2 with that invoice?

3 A. A hundred.

4 MR. KRINSKY: I have no further  
5 questions.

6 MR. GREENBERG: Me neither.

7 (Deposition concluded at 1:22 p.m.)  
8 

9 LEWIS ROTHMAN

10

11 Subscribed and sworn to before me

12 this \_\_\_ day of \_\_\_\_\_, 2000.

13 \_\_\_\_\_

14

15

16

17

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19

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21

22

23

24

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1

2

## C E R T I F I C A T E

3

STATE OF NEW JERSEY )

4

: ss.

5

COUNTY OF MORRIS )

6

P

7

I, FRANCIS X. FREDERICK, a Notary Public

8

within and for the State of New Jersey, do

9

hereby certify:

10

That LEWIS ROTHMAN, the witness whose

11

deposition is hereinbefore set forth, was

12

duly sworn by me and that such deposition is

13

a true record of the testimony given by the

14

witness.

15

I further certify that I am not

16

related to any of the parties to this action.

17

by blood or marriage, and that I am in no

18

way interested in the outcome of this

19

matter.

20

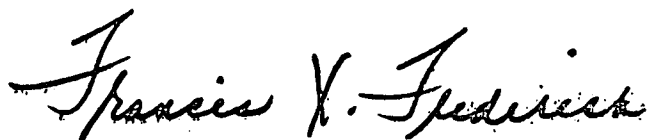
IN WITNESS WHEREOF, I have hereunto

21

set my hand this 3rd day of November, 2000.

22

23



24

25

FRANCIS X. FREDERICK

1

## 2 ----- I N D E X -----

3 WITNESS EXAMINATION BY PAGE

4 LEWIS ROTHMAN MR. KRINSKY: 4, 111

5 MR. GREENBERG 105

## 6 ----- EXHIBITS -----

7 PLAINTIFF'S FOR ID.

8 Exhibit 193

9 Deposition Notice and Subpoena..... 5:23

10 Exhibit 194

11 (30)(b)(6) Notice..... 6:2

12 Exhibit 195

13 company list..... 13:17

14 Exhibit 196

15 color brochure..... 55:7

16 Exhibit 197

17 Declaration of Lewis Rothman in

18 Opposition to Counterclaim Plaintiff's

19 Motions for Summary

20 Judgment..... 72:10

21 Exhibit 198

22 Plaintiff's Memorandum in Opposition

23 to Defendant's and Counterclaim

24 Plaintiff's Motion for Summary

25 Judgment..... 84:9

1		
2	PLAINTIFF'S	FOR ID.
3	Exhibit 199	
4	photograph.....	94:13
5	Exhibit 200	
6	photograph.....	94:17
7	Exhibit 201	
8	photograph.....	96:2
9	Exhibit 202	
10	label.....	100:17
11		
12	ROTHMAN	FOR ID.
13	Exhibit 1	
14	Notice of Deposition and Subpoena.....	104:24
15	Exhibit 2	
16	Notice of Deposition and Subpoena.....	105:4
17	Exhibit 3	
18	group of invoices.....	106:7
19	Exhibit 4	
20	copy of packaging.....	109:15
21		
22		
23		
24		
25		

1	ERRATA SHEET			
2	ESQUIRE DEPOSITION SERVICES			
3	216 EAST 45TH STREET			
4	NEW YORK, NEW YORK 10017			
5	(212) 687-8010			
6	NAME OF CAPTION: EMPRESA CUBANA VS CULBRO VORP.			
7	DATE OF DEPOSITION: OCTOBER 31, 2000			
8	NAME OF WITNESS: LEWIS ROTHMAN			
9	PAGE	LINE	FROM	TO
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21	LEWIS ROTHMAN			
22	Subscribed and sworn to before me.			
23	this _____ day of _____, 2000.			
24				
25	_____ (Notary Public)		_____ My Commission Expires:	
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

-----	X	
EMPRESA CUBANA DEL TABACO, d.b.a.	:	
CUBATABACO,	:	
	:	
Petitioner,	:	
	:	Cancellation No. 92025859
v.	:	
GENERAL CIGAR CO., INC.	:	
	:	
Respondent.	:	
	:	
	:	
	:	
-----	X	

PARTY DESIGNATIONS\*: Petitioner's Designations During Its Trial Period—Yellow or Pink  
Respondent's Designations During Its Trial Period—Green  
Petitioner's Designations During Its Rebuttal Period—Blue

DESIGNATION in 97 Civ. 8399 (RWS), United States District Court, Southern District of New York, *Empresa Cubana de Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc.*):

**Designated Federal Action Discovery Deposition  
Transcript of Lewis Rothman (30(b)(6) and 45), dated February 14, 2001**

\* Designations made pursuant to the marking and filing procedure the Board has previously approved, TTABVue Nos. 138, 136, 135, 132, 91 and 89.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff,

vs.

97 Civ. 8399 (RWS)

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

Defendants.

**ORIGINAL**

-----X

VOLUME II

Rule 30(B)(6) and 45 DEPOSITION OF LEWIS ROTHMAN

New Jersey, New York

Wednesday, February 14, 2001

Reported by:  
ANNETTE ARLEQUIN  
CSR NO. 1450  
JOB NO. 118168

  
**ESQUIRE**<sup>™</sup>  
DEPOSITION SERVICES

216 East 45th Street, 8th Floor  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

EMPRESA CUBANA DEL TABACO, d.b.a.

CUBATABACO,

Plaintiff,

vs.

97 Civ. 8399 (RWS)

CULBRO CORPORATION and GENERAL

CIGAR CO., INC.,

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February 14, 2001

10:35 a.m.

Rule 30(B)(6) and 45 deposition of  
LEWIS ROTHMAN, held at the offices of JR  
TOBACCO, 301 Route 10 East, Whippany, New  
Jersey, pursuant to Notice, before Annette  
Arlequin, a Certified Shorthand Reporter and a  
Notary Public of the State of New York.

1

2 A P P E A R A N C E S:

3

4

5 RABINOWITZ, BOUDIN, STANDARD, KRINSKY &amp;

6 LIEBERMAN, P.C.

7 Attorneys for Plaintiff

8 740 Broadway at Astor Place, 5th Floor

9 New York, New York 10003-9518

10 BY: MICHAEL KRINSKY, ESQ.

11

12

13 MORGAN &amp; FINNEGAN, LLP

14 Attorneys for Defendants

15 345 Park Avenue

16 New York, New York 10154-0053

17 BY: SCOTT D. GREENBERG, ESQ.

18

19

20 A L S O P R E S E N T:

21

22 MICHAEL COLLETON, CFO, JR Cigar, Inc.

23

24

25

1  
2 L E W I S R O T H M A N, called as a  
3 witness, having been duly sworn by a Notary  
4 Public, was examined and testified as  
5 follows:

6 EXAMINATION BY

7 MR. KRINSKY:

8 Q. Mr. Rothman, as you will remember, we  
9 took your deposition in this case once before.  
10 We appreciate you making the time for us to come  
11 back.

12 As you remember, my name is Michael  
13 Krinsky of Rabinowitz, Boudin, Standard, Krinsky  
14 & Lieberman in New York. We represent the  
15 plaintiff, Cubatabaco.

16 Mr. Greenberg here is from Morgan &  
17 Finnegan and they represent the defendants,  
18 Culbro and General Cigar.

19 I'm going to ask you a few questions.  
20 If you don't understand anything, please let me  
21 know and I'll rephrase the question.

22 If you want to take a break at any  
23 time, let us know, all right? I hope we're not  
24 going to be very long.

25 Let me show you an exhibit that you



1 Rothman  
2 were shown at the last deposition. It was  
3 marked as Defendants' Exhibit Rothman No. 3 and  
4 it bears production numbers, defendants'  
5 production numbers GC 723A. It's a composite  
6 exhibit of three invoices. The other numbers  
7 are GC 7572 and GC 7573. It's a composite  
8 exhibit of three pages.

9 Let me --

10 MR. KRINSKY: I didn't bring an extra  
11 set.

12 (Witness reviewing document.)

13 A. Okay.

14 Q. And you remember seeing that the last  
15 time?

16 A. Yup.

17 Q. Look at the page 1.

18 Is the figure in the right column,  
19 1.73 next to Cohiba, the price that Cigar Santa  
20 Clara paid for those Cohiba cigars?

21 A. Yes. It will be \$1.73 a box.

22 Q. And the box had 50 cigars?

23 A. Right.

24 Q. And that would be the same as true  
25 for Cienfuegos?

1 Rothman

2 A. Correct.

3 Q. And looking on the next page, the  
4 invoice dated June 25, '81, the price for the  
5 Cohiba cigars invoiced there was \$3,000.45?

6 A. No.

7 Q. Excuse me? What was the price?

8 A. \$1.73. \$1.72-and-a-half. It says  
9 here they're billed in hundreds instead of  
10 fifties.

11 Q. How many Cohiba cigars does this  
12 invoice represent?

13 A. A hundred cigars.

14 Q. And what was the price paid for the  
15 hundred cigars?

16 A. \$3.45.

17 Q. And turning to the third page, what  
18 was the price paid for the Cohiba cigars  
19 invoiced on that document?

20 A. The same; \$3.45 for 100.

21 Q. For 100 cigars.

22 Now on these documents there's a  
23 column which is headed "Price."

24 Do you know what that represents?

25 A. That's the -- normally it would be

1 Rothman  
2 the price per thousand, but in this case --  
3 yeah, it looks like it's the price for 1,000  
4 cigars. Yeah. In the next column it says "per"  
5 and the "M" is for 1,000.

6 Q. All right. I see.

7 Now, did Cigar Santa Clara actually  
8 pay Culbro or General Cigar for these Cohibas  
9 that are shown on these invoices?

10 A. Let me see the invoice again, because  
11 normally it would be stamped or something.

12 Q. This was produced by the, General  
13 Cigar.

14 A. The last bill, which is No. 144844,  
15 there's an indication here that this was paid.  
16 I would assume the others were paid.

17 The person who did this hasn't worked  
18 here in over 20 years, but I believe normally --  
19 this was before we had computers and I think  
20 they would write on the last page of every group  
21 of invoices, what invoices were being paid and  
22 the total for the group of invoices.

23 So this particular bill shows a  
24 payment of, looks like \$9,012.73, which would be  
25 more than this bill, the number of bills.

1 Rothman

2 Q. I see.

3 In connection with the Cohiba cigars  
4 indicated on these invoices, did you receive any  
5 rebates back from General Cigar in connection  
6 with those Cohibas?

7 A. Rebates in -- what are you talking  
8 about? I'm not clear on that.

9 Q. What was the financial arrangement  
10 with respect to Cigar Santa Clara's purchase of  
11 those Cohiba cigars?

12 A. Well, on the cigars that they sent in  
13 for trademarks, they would send them in in huge  
14 groups. Sometimes there would be 30 or 40  
15 different brand names. I believe they sent 100  
16 cigars of each brand name periodically. How  
17 often, I don't remember; three, four times a  
18 year, and then we would get credit for these  
19 cigars. They weren't really -- you know, they  
20 were there for trademark purposes. All the  
21 boxes were identical with different names on  
22 them.

23 Q. And when you say you got credit, what  
24 do you mean by that?

25 A. We would get a credit invoice, you

1 Rothman

2 know, at some point in time, and I didn't do the  
3 bill keeping so I don't know, for this stuff.

4 Q. You would receive a credit for other  
5 purchases or other amounts you owed General  
6 Cigar. Is that what you mean?

7 A. No. They would be for these  
8 particular -- you know, for the trademark stuff.

9 Q. You would receive invoices for these  
10 30 to 40 brands that you mentioned?

11 A. Right. It would be like if they were  
12 protecting Tiperillo, one box would say Tip, the  
13 next one would say Erillo. Some would say, I  
14 think -- I don't recall exactly, but it would be  
15 different parts of the name. Not only were they  
16 protecting the names, but different parts of the  
17 same name.

18 Q. Now, you would receive invoices for  
19 those shipments and you would pay the amount  
20 that was invoiced; is that correct?

21 A. Somebody in our company would, yes.  
22 I never did this myself.

23 Q. Okay. And when you said you would  
24 get a credit for those shipments, what did you  
25 mean by that? You would get a credit --

1 Rothman

2 A. We would get a credit slip for the  
3 trademark stuff.

4 Q. Is it that the amount you paid would  
5 be offset in any way in your relations with  
6 General Cigar?

7 A. Yes. We would get a credit  
8 statement, you know, a credit slip for whatever,  
9 you know, was on that invoice eventually.

10 Q. And what would this credit slip say?

11 A. I don't recall. It was a long time  
12 ago.

13 Q. Well, what would you do with this  
14 credit slip?

15 A. We would use it as a credit against  
16 whatever bills we happened to be paying at the  
17 time.

18 Q. So for example, let us say you paid  
19 \$1,000, hypothetically, for the shipment of  
20 these cigars, these 30 to 40 brand names you've  
21 been mentioning, and after you made the payment  
22 of those, you would get back from General Cigar  
23 a credit slip for \$1,000 which you then could  
24 use to give back to General Cigar in payment of  
25 something you owed them; is that correct?

1 Rothman

2 A. Correct.

3 Q. And this system of credit applied to  
4 your purchase of the Cohiba cigars; is that  
5 correct?

6 A. Did it apply to my purchase of the  
7 Cohiba cigars. Well, it applied to my purchase  
8 of anything from General Cigar.

9 If you're trying to say effectively,  
10 you know, did it nullify or credit me for this  
11 particular thing, then yes, the answer is yes.

12 Q. And the system you just described was  
13 used with respect to the invoices that you have  
14 in front of you as Defendants' Exhibit Rothman  
15 No. 3; is that correct?

16 A. I assume so, but since it was so long  
17 ago, I couldn't tell you for sure.

18 You know, I could just tell you that  
19 that was the practice.

20 Q. But the Cohiba cigars that you  
21 received were part of this group that you  
22 understood to be receiving for trademark  
23 purposes; is that correct?

24 A. Yes. They were all the same cigar  
25 regardless of what name it was.

1 Rothman

2 Q. When you say "the same cigar," you  
3 mean the same product?

4 A. Yes. It was a little yellow box,  
5 what I assume were White Owl miniatures. At  
6 least that's what they looked like.

7 Q. But the boxes had different names on  
8 them; is that correct?

9 A. Yes, or parts of names.

10 Q. And who made this arrangement with  
11 you, the financial arrangement you described?

12 A. Bob Lillienfeld.

13 Q. And was this in a discussion you had  
14 with him?

15 A. Yes. At some point in time, yes.

16 Q. Do you recall what was said at that  
17 meeting?

18 A. Just that they were going to use us  
19 for, you know, as a recipient of these cigars  
20 for trademarking purposes because they had to, I  
21 guess, ship a certain number of cigars in  
22 interstate commerce to retain these names.  
23 There were probably other people I would assume.

24 Q. And did he indicate at that time what  
25 the financial arrangements would be?



1 Rothman

2 A. I don't recall.

3 Q. And did you agree to receive these  
4 cigars for those purposes?

5 A. Sure.

6 Q. And why was that?

7 A. They were one of my largest vendors.  
8 I mean there was no reason why I shouldn't.

9 Q. Did you expect to make any profit  
10 from receiving these cigars from their resale?

11 A. No. You're talking about a bill for  
12 \$3.46.

13 Q. You did this as an accommodation to  
14 General Cigar?

15 A. Yes.

16 Q. Do you remember approximately when  
17 you had this conversation with Bob Lillienfeld?

18 A. No.

19 Q. I'm going to show you what has  
20 already been marked in this case as Plaintiff's  
21 Deposition Exhibit 142 --

22 MR. KRINSKY: Again, I apologize I  
23 don't have a copy.

24 BY MR. KRINSKY:

25 Q. -- which is a document that's been

1 Rothman

2 produced by General Cigar to us in this case  
3 bearing production No. GC 6226.

4 Do you recognize that document?

5 A. No. It looks like a Rorschach test.

6 Do you have the original?

7 Q. I'm sorry, we don't. It's supposed  
8 to be, or it's been represented to us to be a  
9 photocopy of a cigar box, a type of a cigar box.

10 The boxes in which the Cohibas were  
11 sent to you, were they wood boxes?

12 A. No. Once.

13 Q. Once?

14 A. Yeah. I believe once or twice they  
15 were a full semi-boite nature. They were wooden  
16 boxes once or twice, and those were handmade  
17 cigars that I believe came from Jamaica or the  
18 Dominican Republic. All the other times they  
19 were in a cardboard box, yellowish in color.

20 Q. And that was the same box that was  
21 used for all these 30 to 40 brands you would  
22 receive for trademark purposes?

23 A. No. When they came in the wood box,  
24 it was the brand Cohiba, a brand called  
25 Cifuentes, and I don't remember the third brand,

1 Rothman

2 but it was three different wood boxes with  
3 handmade cigars in them.

4 Q. And did you ever receive Cohibas in  
5 the cardboard box you described?

6 A. According to that bill, yes. Do I  
7 specifically remember them? No.

8 Q. And was this...

9 MR. KRINSKY: I'm going to mark as a  
10 composite exhibit, let's call it Plaintiff's  
11 Rothman-1, since I don't know where we are  
12 in the sequence of deposition exhibits.

13 (Plaintiff's Exhibit Rothman-1, Group  
14 of invoices, marked for identification, as  
15 of this date.)

16 MR. KRINSKY: And just for the record,  
17 this exhibit is a composite exhibit of  
18 invoices produced by General Cigar and  
19 bearing their production Nos. 012466,  
20 012469, 012470, 012471, 012472, 73, 74, 76,  
21 78, 79, 81, 82, 87, 88, 89, 12490 and 91.

22 A. You have questions?

23 Q. Have you looked at them?

24 A. Yes.

25 Q. Now, looking at the top page, 12466,

1 Rothman

2 are these the brands that you said you received  
3 for trademark purposes?

4 A. Yes.

5 Q. Now, did you make a request to  
6 General Cigar for them to sell you these brands?

7 A. No.

8 Q. And these were all brands that  
9 General Cigar told you that they would like to  
10 send to you for trademark purposes; is that  
11 correct?

12 A. Well, I didn't know the names of them  
13 until I actually received it.

14 Q. And when you paid these invoices, you  
15 would get back the credit slip that you  
16 described; is that correct?

17 A. As best as I recall, yes.

18 Q. Now, did the shipments indicated by  
19 these invoices come in those cardboard boxes you  
20 described?

21 A. On the invoices that are in this  
22 batch, yes.

23 Q. And when you say "this batch," you  
24 were referring to all of the invoices that are  
25 part of this Plaintiff's Rothman No. 1?

1 Rothman

2 A. Yes.

3 Q. And these cardboard boxes would have  
4 on them the different names that appear on these  
5 invoices; is that correct?

6 A. Yes.

7 Q. And how was the name affixed to the  
8 boxes, do you recall?

9 A. It was printed. It was printed in  
10 black on a yellow box.

11 Q. Was it on a label that was affixed to  
12 the box or was it actually printed on the box  
13 itself?

14 A. It was printed on the box itself.

15 Q. Now, was the product, the cigar that  
16 was sent to you under all these different names,  
17 the same cigar?

18 A. Yes.

19 Q. Do you recall for how long you  
20 received this group of cigars from General  
21 Cigar?

22 A. No.

23 Q. Do you recall when you first received  
24 them?

25 A. It would have to be -- I can only

1 Rothman

2 give you a period of time. It would have to be  
3 between 1973 going forward. I'm not saying the  
4 earliest one was 1973, but that would be the  
5 period of time.

6 Q. Did there come a time when --  
7 withdraw that.

8 When Mr. Lillienfeld spoke to you in  
9 the conversation you've referenced, did he tell  
10 you how many different brands you would be  
11 receiving?

12 A. No.

13 Q. Did he indicate there would be cigars  
14 under more than one name?

15 A. Just that they were going to send us  
16 cigars for trademark purposes. That's all I  
17 recall about the conversations.

18 Q. Did Mr. Lillienfeld ask you to  
19 promote these cigars in any way to your  
20 customers?

21 A. I've already told you, that's all I  
22 remember about the conversation. It doesn't  
23 matter what you ask me now, that's all I have.

24 Q. Maybe the questions will refresh you  
25 a little bit.

1 Rothman

2 When you received the cigars, did you  
3 receive them all in one shipment?

4 A. Yes.

5 Q. So you were -- looking, for instance,  
6 to the first invoice which is, has a production  
7 number 12466, you received 33 boxes of cigars  
8 that correspond to this invoice at the same  
9 time; is that correct?

10 A. No, it's not possible since they're  
11 all hundreds, which would indicate two boxes, so  
12 it would have to be an even number.

13 Q. Okay. Can you tell approximately --

14 A. Whatever was on the invoice would be  
15 what we received in the box or boxes.

16 Q. All right. So with respect to this  
17 invoice, you would have received 66 boxes; is  
18 that correct?

19 A. We're looking at 12466?

20 Q. Right.

21 A. That's correct.

22 Q. And these were received at your store  
23 at 108 West 45th Street; is that correct?

24 A. Yes.

25 Q. And that was a retail store; is that

1 Rothman

2 correct?

3 A. Retail. Well, we did both, retail  
4 and wholesale.

5 Q. And when you received these 66 boxes,  
6 what would you do with them physically?

7 A. Physically? We just threw them on  
8 the floor and sold them like for \$1 a box or  
9 whatever.

10 Q. When you say you put them on the  
11 floor, where within the store would they be --

12 A. This particular store was  
13 merchandised by -- with cases of cigars  
14 throughout the store, just cut open in a  
15 diagonal fashion and we sold the cigars right in  
16 the same cartons they were in. So this carton  
17 would have just sat on the floor with a sign on  
18 it that said whatever, miscellaneous cigars, \$1  
19 a box.

20 Q. And if the box for Cohiba happened to  
21 be the bottom of the box, the bottom of the  
22 carton that it was received in, then it would  
23 not have been visible to a customer; is that  
24 correct?

25 A. Not unless he had X-ray vision, yes.



1 Rothman

2 Q. And were there any instructions you  
3 received to put the -- withdraw that.

4 Was the Cohiba cigars, the box  
5 bearing the name Cohiba, was that on the top of  
6 the pile of cigars within the carton?

7 A. I have no idea.

8 Q. Was there any pattern that you recall  
9 as to the placement of the boxes within the  
10 carton?

11 A. No.

12 Q. Did you or any of your employees make  
13 any effort to promote these cigars?

14 A. No.

15 Q. Did you make any effort to talk about  
16 them to customers?

17 A. No.

18 Q. Do you recall where the shipments  
19 were from? Where did the cigars originate from?

20 Let me withdraw that.

21 Do you know where the cigars were  
22 immediately before they were received by your  
23 store?

24 A. Yes, as a guess, but at that time  
25 possibly Phillipsburg, Pennsylvania.

1 Rothman

2 Q. General Cigar had a warehouse there?

3 A. I seem to recall that.

4 Q. Now, after you -- well, before we  
5 move on, you've described how, just now in your  
6 testimony, how the shipment of the cigars that  
7 are indicated on the first invoice, 12466, were  
8 received and what you did with them.

9 Does that hold true for all of the  
10 invoices and all of the shipments represented by  
11 those invoices in Plaintiff's Exhibit Rothman  
12 Exhibit No. 1?

13 A. Yes.

14 Q. Did you ever place any reorders for  
15 these cigars?

16 A. No.

17 Q. Did you know when new shipments would  
18 be coming?

19 A. No.

20 Q. Did you receive new shipments -- I  
21 withdraw that.

22 Was the prior shipment used up before  
23 you received the new shipment?

24 A. I would assume so.

25 Q. Did you ever dispose of any of these

1 Rothman

2 shipments other than by sale to customers?

3 A. No.

4 Q. Did you ever report to General Cigar  
5 on the extent of the sales of the Cohibas you  
6 received with these shipments?

7 A. No.

8 Q. Did you ever report to General Cigar  
9 on the extent of the sale of any of these brands  
10 that were received by you?

11 A. No.

12 Q. Did you ever discuss with anyone from  
13 General Cigar about how you were going to  
14 display the cigars?

15 A. No.

16 Q. Did you ever discuss with General  
17 Cigar the quality of the cigars?

18 A. No.

19 Q. Did you ever discuss with General  
20 Cigar the reaction of your customers to the  
21 Cohiba cigars?

22 A. No.

23 Q. Or to any of the cigars indicated on  
24 these invoices?

25 A. No, nor any cigars that they've ever

1 Rothman

2 sold me.

3 Q. Going back to Rothman No. 3, those  
4 three invoices, were the Cohiba cigars  
5 referenced by those invoices also received --  
6 let me withdraw that.

7 Is what you said about the receipt of  
8 the shipments represented by Plaintiff's, the  
9 invoices grouped together as Plaintiff's Rothman  
10 No. 1 about the manner of their receipt and  
11 their display and what you did with those  
12 shipments, also true with respect to the  
13 shipments of the cigars represented by the  
14 invoices grouped together as Rothman No. 3?

15 A. Yes.

16 Q. Okay. During the period you were  
17 receiving these shipments, did you ever have any  
18 discussions with people from General Cigar in  
19 which there was a reference to Cuba in the  
20 context of the Cohiba cigar that's referenced on  
21 these invoices?

22 A. No.

23 Q. Or in the context of the Cienfuegos  
24 cigar referenced on these invoices?

25 A. No.

1 Rothman

2 Q. Or Vinales?

3 A. No.

4 Q. During this period of time when you  
5 were receiving these shipments, do you recall  
6 any conversations about Cuba or Cuban cigars  
7 with General Cigar at all?

8 A. No.

9 Q. Were the Cohiba cigars referenced in  
10 the invoices that are part of Plaintiff's  
11 Rothman No. 1, were they machine made cigars?

12 A. Yes.

13 Q. And what about the Cohiba cigars  
14 referenced in Rothman No. 3?

15 A. There is a possibility that the ones  
16 on invoice No. 143481, which is the first page  
17 of Rothman-3, there is a possibility that those  
18 were handmade, but I don't specifically know  
19 that.

20 Q. And what about the other two invoices  
21 that are part of that exhibit?

22 A. No, they were machine made.

23 Q. And what is it about that first  
24 invoice, 143481, which makes you consider that  
25 possibility?

1 Rothman

2 A. As I previously stated, I had  
3 received once or twice, handmade cigars in  
4 wooden boxes. I thought there were three  
5 different trademarks in there, but there may  
6 have been two.

7 So since this only has two line  
8 items, that might very well have been one of  
9 those shipments, but I can't say for sure.

10 Q. Did there come a time when you no  
11 longer received from General Cigar these  
12 shipments of these groups of cigars or this  
13 group of cigars?

14 A. Yes.

15 Q. Did they all stop at the same time?

16 A. I don't remember.

17 Q. Do you remember approximately when  
18 the shipments of Cohiba stopped?

19 A. No.

20 Q. Do you remember approximately when  
21 the other shipments stopped?

22 A. No.

23 Q. At this store on 45th Street where  
24 these cigars were placed on the floor, did you  
25 sell any other General Cigar brands?

1 Rothman

2 A. Sure.

3 Q. And which ones were those?

4 A. All the ones they carried.

5 Everything they carried.

6 Q. Would that have included Macanudo?

7 A. Yes.

8 Q. White Owl?

9 A. Yes.

10 Q. Tiperillo?

11 A. Yes. If they carried it, it would

12 include all the names that you are going to

13 read.

14 Q. How were they presented to the

15 customer, let's say White Owl?

16 A. In the identical fashion; stacked on

17 the floor.

18 Q. And would there be a sign on it?

19 A. Yes.

20 Q. What would the sign say?

21 A. White Owl.

22 Q. And there would be a price?

23 A. Yes.

24 Q. And do you recall the price per box

25 that you were posting in the store for White Owl

1 Rothman

2 at that time?

3 A. No. There's different sizes of White  
4 Owl.

5 Q. What about for Macanudo?

6 A. There's got to be 20 sizes of  
7 Macanudo.

8 Q. Do you recall the range of prices for  
9 the different sizes?

10 A. In 1978?

11 Q. Approximately.

12 A. Give or take anywhere from I'd say a  
13 quarter to 95 cents.

14 Q. That's a quarter per box?

15 A. No, per cigar.

16 Q. And what about, Macanudos was 90  
17 cents per cigar?

18 A. Yes.

19 Q. And Macanudos were sold in boxes of  
20 25 or 50?

21 A. Depending on the size.

22 Q. Well, do you recall what a box of 50  
23 Macanudos would have been sold by you for, the  
24 range?

25 A. Well, maybe \$17.95 or so. That would



1 Rothman

2 have been a small cigar called a Caviar.

3 Q. And that would have been at the lower  
4 end of the range?

5 A. That was the lower range, yes. That  
6 was the bottom.

7 Q. And do you recall selling Partagas  
8 during that period of time?

9 A. I only recall Partagas if they had  
10 started to market prior to 1978, but I can find  
11 out.

12 Q. Do you recall -- I think you  
13 testified previously that you were selling  
14 during that period of time, La Corona.

15 Do you recall that?

16 A. La Corona?

17 Q. Yes.

18 A. Yes.

19 Q. And what was the price range for a  
20 box of 50 La Corona that you were charging?

21 A. I would say probably about a third of  
22 what Macanudos cost. At the time, that was a  
23 machine made cigar.

24 Q. And Macanudo was a hand-rolled?

25 A. Yes.

1 Rothman

2 MR. KRINSKY: I'd like you to mark  
3 this as Plaintiff's Rothman No. 2.

4 Is there any place --

5 THE WITNESS: I don't care. Put it on  
6 the address.

7 MR. KRINSKY: Okay.

8 (Plaintiff's Exhibit Rothman-2, 1978  
9 catalog, marked for identification, as of  
10 this date.)

11 BY MR. KRINSKY:

12 Q. Mr. Rothman, can you please identify  
13 Plaintiff's Rothman No. 2 for the record?

14 A. It's my catalog from 1978.

15 Q. And in this catalog there are stated  
16 the prices you were offering various brands to  
17 the public; is that correct?

18 A. Yes.

19 Q. Did you have any other catalogs in  
20 1978 besides that one?

21 A. Yes.

22 Q. And were the prices -- let me back  
23 up.

24 The prices that are listed in Rothman  
25 Exhibit No. 2 are the prices a customer would be

1 Rothman  
2 charged who entered your store on 45th Street  
3 for the cigars being sold there?

4 A. Yes.

5 Q. In any of the catalogs you had in  
6 1978, was there a listing of Cohiba?

7 A. No.

8 Q. Was there a listing of Cohiba in this  
9 catalog?

10 A. No.

11 Q. Did you have catalogs in 1979?

12 A. Yes. We had catalogs every year from  
13 1971 until the present.

14 Q. Did you have a catalog similar in  
15 appearance, in 1979, as Plaintiff's Rothman  
16 No. 2?

17 A. Specifically, I don't recall.

18 Q. Well, in any of the catalogs you had  
19 in 1979, was Cohiba listed?

20 A. Not that I recall.

21 Q. How about the catalogs in 1980?

22 A. I don't recall Cohiba being listed in  
23 my catalog ever.

24 Q. When you entered the store at 45th  
25 Street, in 1978 let's say, where in relationship

1 Rothman

2 to the entrance would have been the carton of  
3 miscellaneous boxes that you had stated?

4 A. No specific place. Wherever there  
5 was an empty spot on the floor.

6 Q. And how big a store was it, how big  
7 of a floor space?

8 A. About 4,000 square feet. 4 to 5,000  
9 square feet.

10 Q. And was all of that space used to  
11 display cigars for the customers?

12 A. Yes.

13 MR. KRINSKY: Okay. No further  
14 questions.

15 EXAMINATION BY

16 MR. GREENBERG:

17 Q. Were there other brands of cigars not  
18 listed in your catalogs that you would sell in  
19 your stores?

20 A. Absolutely.

21 MR. GREENBERG: No further questions.

22 MR. KRINSKY: I have further  
23 questions.

24 FURTHER EXAMINATION

25 BY MR. KRINSKY:

1 Rothman

2 Q. Looking at Plaintiff's Rothman  
3 Exhibit 1, if you look at the top invoice which  
4 bears production No. 12466, in 1978 did you list  
5 any of those brands in your catalogs?

6 A. No.

7 Q. And do you recall whether you listed  
8 any of these brands in your catalogs in 1979?

9 A. Possibly. The only one that is  
10 possible that I have ever listed, I mean I know  
11 I have listed it, is Canario D' Oro, which  
12 became a real brand at some point in time I  
13 would say in 1982 or something.

14 Q. Other than for that possible  
15 exception, is it your testimony that you did not  
16 list any of the other brands?

17 A. That's correct.

18 MR. KRINSKY: No further questions.

19 MR. GREENBERG: None.

20 (Time noted: 11:40 a.m.)

21

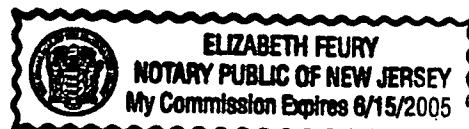
22 LEWIS ROTHMAN

23 Subscribed and sworn to before me

24 this 19 day of March, 2000.

25

*Elizabeth Feury*



## C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, ANNETTE ARLEQUIN, a Shorthand  
Reporter and Notary Public within and for  
the State of New York, do hereby certify:

That LEWIS ROTHMAN, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the  
testimony given by the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 1st day of March, 2001.

  
-----  
ANNETTE ARLEQUIN, CSR, RPR

My commission expires:  
6/30/02

1

2

## ----- I N D E X -----

3

WITNESS

EXAMINATION BY

PAGE

4

5

LEWIS ROTHMAN

MR. KRINSKY

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MR. GREENBERG

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8

## ----- EXHIBITS -----

9

PLAINTIFF'S

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Plaintiff's Exhibit Rothman-1, Group of  
invoices

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Plaintiff's Exhibit Rothman-2, 1978  
catalog

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ERRATA SHEET  
ESQUIRE DEPOSITION SERVICES  
216 EAST 45TH STREET  
NEW YORK, NEW YORK 10017  
(212) 687-8010

NAME OF CASE: CUBATABACO VS. GENERAL CIGAR

DATE OF DEPOSITION: FEBRUARY 14, 2001

NAME OF WITNESS: LEWIS ROTHMAN

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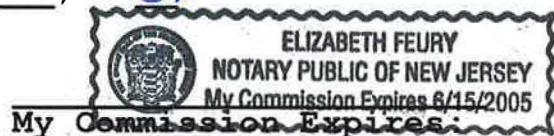
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LEWIS ROTHMAN

Subscribed and sworn to before me.

this 19 day of march, 2001.

(Notary Public)





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